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REPORT

FROM THE

COMMITTEE OF THE HOUSE OF COMMONS,

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IN RELATION TO THEIR PROCEEDINGS
ON THE TRIAL OF

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WITH AN APPENDIX.

ALSO,

REMARKS IN VINDICATION OF THE SAME FROM THE
ANIMADVERSIONS OF LORD THURLOW.

1794.

VOL. XI.

NOTE.

In the sixth article Mr. Burke was supported, on the 16th of February, 1790, by Mr. Anstruther, who opened the remaining part of this article and part of the seventh article, and the evidence was summed up and enforced by him. The rest of the evidence upon the sixth, and on part of the seventh, eighth, and fourteenth articles, were respectively opened and enforced by Mr. Fox and other of the Managers, on the 7th and 9th of June, in the same session. On the 23d May, 1791, Mr. St. John opened the fourth article of charge; and evidence was heard in support of the same. In the following sessions of 1792, Mr. Hastings's counsel were heard in his defence, which was continued through the whole of the sessions of 1793.

On the 5th of March, 1794, a select committee was appointed by the House of Commons to inspect the Lords' Journals, in relation to their proceeding on the trial of Warren Hastings, Esquire, and to report what they found therein to the House, (which committee were the managers appointed to make good the articles of impeachment against the said Warren Hastings, Esquire,) and who were afterwards instructed to report the several matters which had occurred since the commencement of the prosecution, and which had, in their opinion, contributed to the duration thereof to that time, with their observations thereupon. On the 30th of April, the following Report, written by Mr. Burke, and adopted by the Committee, was presented to the House of Commons, and ordered by the House to be printed.

REPORT

Made on the 30th April, 1794, from the Committee of the House of Commons, appointed to inspect the Lords' Journals, in relation to their proceeding on the trial of Warren Hastings, Esquire, and to report what they find therein to the House (which committee were the managers appointed to make good the articles of impeachment against the said Warren Hastings, Esquire); and who were afterwards instructed to report the several matters which have occurred since the commencement of the said prosecution, and which have, in their opinion, contributed to the duration thereof to the present time, with their observations thereupon.

YOUR Committee has received two powers from the House:—The first, on the 5th of March, 1794, to inspect the Lords' Journals, in relation to their proceedings on the trial of Warren Hastings, Esquire, and to report what they find therein to the House. The second is an instruction, given on the 17th day of the same month of March, to this effect: That your Committee do report to this House the several matters which have occurred since the commencement of the said prosecution, and which have, in their opinion, contributed to the duration thereof to the present time, with their observations thereupon.

Your Committee is sensible that the duration of the said trial, and the causes of that duration, as well as the matters which have therein occurred, do well merit the attentive consideration of this House. We have therefore endeavored with all diligence to employ the powers that have been granted and to execute the orders that have been given to us, and to report thereon as speedily as possible, and as fully as the time would admit.

Your Committee has considered, first, the mere fact of the duration of the trial, which they find to have commenced on the 13th day of February, 1788, and to have continued, by various adjournments, to the said 17th of March. During that period the sittings of the Court have occupied one hundred and eighteen days, or about one third of a year. The distribution of the sitting days in each year is as follows.

	Days.
In the year 1788, the Court sat	35
1789, ...	17
1790, ...	14
1791, ...	5
1792, ...	22
1793, ...	22
1794, to the 1st of March, inclusive .	3
Total . .	118

Your Committee then proceeded to consider the causes of this duration, with regard to time as measured by the calendar, and also as measured by the number of days occupied in actual sitting. They find, on examining the duration of the trial with ref-

erence to the number of years which it has lasted, that it has been owing to several prorogations and to one dissolution of Parliament; to discussions which are supposed to have arisen in the House of Peers on the legality of the continuance of impeachments from Parliament to Parliament; that it has been owing to the number and length of the adjournments of the Court, particularly the adjournments on account of the Circuit, which adjournments were interposed in the middle of the session, and the most proper time for business; that it has been owing to one adjournment made in consequence of a complaint of the prisoner against one of your Managers, which took up a space of ten days; that two days' adjournments were made on account of the illness of certain of the Managers; and, as far as your Committee can judge, two sitting days were prevented by the sudden and unexpected dereliction of the defence of the prisoner at the close of the last session, your Managers not having been then ready to produce their evidence in reply, nor to make their observations on the evidence produced by the prisoner's counsel, as they expected the whole to have been gone through before they were called on for their reply. In this session your Committee computes that the trial was delayed about a week or ten days. The Lords waited for the recovery of the Marquis Cornwallis, the prisoner wishing to avail himself of the testimony of that noble person.

With regard to the one hundred and eighteen days employed in actual sitting, the distribution of the business was in the manner following.

There were spent, —

	Days.
In reading the articles of impeachment, and the defendant's answer, and in debate on the mode of proceeding	8
Opening speeches, and summing up by the Managers	19
Documentary and oral evidence by the Managers	51
Opening speeches and summing up by the defendant's counsel, and defendant's addresses to the Court	22
Documentary and oral evidence on the part of the defendant	23
	118

The other head, namely, that the trial has occupied one hundred and eighteen days, or nearly one third of a year. This your Committee conceives to have arisen from the following immediate causes. First, the nature and extent of the matter to be tried. Secondly, the general nature and quality of the evidence produced: it was principally documentary evidence, contained in papers of great length, the whole of which was often required to be read when brought to prove a single short fact. Under the head of evidence must be taken into consideration the number and description of the witnesses examined and cross-examined. Thirdly, and principally, the duration of the trial is to be attributed to objections taken by the prisoner's counsel to the admissibility of several documents and persons offered as evidence on the part of the prosecution. These objections amounted to sixty-two: they gave rise to several debates, and to twelve references from the Court to the Judges. On the part of the Mana-

gers, the number of objections was small; the debates upon them were short; there was not upon them any reference to the Judges; and the Lords did not even retire upon any of them to the Chamber of Parliament.

This last cause of the number of sitting days your Committee considers as far more important than all the rest. The questions upon the admissibility of evidence, the manner in which these questions were stated and were decided, the modes of proceeding, the great uncertainty of the principle upon which evidence in that court is to be admitted or rejected,—all these appear to your Committee materially to affect the constitution of the House of Peers as a court of judicature, as well as its powers, and the purposes it was intended to answer in the state. The Peers have a valuable interest in the conservation of their own lawful privileges. But this interest is not confined to the Lords. The Commons ought to partake in the advantage of the judicial rights and privileges of that high court. Courts are made for the suitors, and not the suitors for the court. The conservation of all other parts of the law, the whole indeed of the rights and liberties of the subject, ultimately depends upon the preservation of the Law of Parliament in its original force and authority.

Your Committee had reason to entertain apprehensions that certain proceedings in this trial may possibly limit and weaken the means of carrying on any future impeachment of the Commons. As your Committee felt these apprehensions strongly, they thought it their duty to begin with humbly submitting facts and observations on the proceedings concerning evidence to the consideration of this House,

before they proceed to state the other matters which come within the scope of the directions which they have received.

To enable your Committee the better to execute the task imposed upon them in carrying on the impeachment of this House, and to find some principle on which they were to order and regulate their conduct therein, they found it necessary to look attentively to the jurisdiction of the court in which they were to act for this House, and into its laws and rules of proceeding, as well as into the rights and powers of the House of Commons in their impeachments.

RELATION OF THE JUDGES, ETC., TO THE COURT OF PARLIAMENT.

Upon examining into the course of proceeding in the House of Lords, and into the relation which exists between the Peers, on the one hand, and their attendants and assistants, the Judges of the Realm, Barons of the Exchequer of the Coif, the King's learned counsel, and the Civilians Masters of the Chancery, on the other, it appears to your Committee that these Judges, and other persons learned in the Common and Civil Laws, are no integrant and necessary part of that court. Their writs of summons are essentially different; and it does not appear that they or any of them have, or of right ought to have, a deliberative voice, either actually or virtually, in the judgments given in the High Court of Parliament. Their attendance in that court is solely ministerial; and their answers to questions put to them are not to be regarded as declaratory of the Law of Parliament, but are merely consultory responses, in order

to furnish such matter (to be submitted to the judgment of the Peers) as may be useful in reasoning by analogy, so far as the nature of the rules in the respective courts of the learned persons consulted shall appear to the House to be applicable to the nature and circumstances of the case before them, and no otherwise.*

JURISDICTION OF THE LORDS.

YOUR Committee finds, that, in all impeachments of the Commons of Great Britain for high crimes and misdemeanors before the Peers in the High Court of Parliament, the Peers are not triers or jurors only, but, by the ancient laws and constitution of this kingdom, known by constant usage, are judges both of law and fact; and we conceive that the Lords are bound not to act in such a manner as to give rise to an opinion that they have virtually submitted to a division of their legal powers, or that, putting themselves into the situation of mere triers or jurors, they may suffer the evidence in the cause to be produced or not produced before them, according to the discretion of the judges of the inferior courts.

LAW OF PARLIAMENT.

YOUR Committee finds that the Lords, in matter of appeal or impeachment in Parliament, are not of right obliged to proceed according to the course or rules of the Roman Civil Law, or by those of the law or usage of any of the inferior courts in Westminster Hall, but by the law and usage of Parliament. And

* 4 Inst. p. 4.

your Committee finds that this has been declared in the most clear and explicit manner by the House of Lords, in the year of our Lord 1387 and 1388, in the 11th year of King Richard II.

Upon an appeal in Parliament then depending against certain great persons, peers and commoners, the said appeal was referred to the Justices, and other learned persons of the law. "At which time," it is said in the record, that "the Justices and Serjeants, and others the learned in the Law Civil, were charged, by order of the King our sovereign aforesaid, to give their faithful counsel to the Lords of the Parliament concerning the due proceedings in the cause of the appeal aforesaid. The which Justices, Serjeants, and the learned in the law of the kingdom, and also the learned in the Law Civil, have taken the same into deliberation, and have answered to the said Lords of Parliament, that they had seen and well considered the tenor of the said appeal; and they say that the same appeal was neither made nor pleaded according to the order which the one law or the other requires. Upon which the said Lords of Parliament have taken the same into deliberation and consultation, and by the assent of our said Lord the King, and of their common agreement, it was declared, that, in so high a crime as that which is charged in this appeal, which touches the person of our lord the King, and the state of the whole kingdom, perpetrated by persons who are peers of the kingdom, along with others, the cause shall not be tried in any other place but in Parliament, nor by any other law than the law and course of Parliament; and that it belongeth to the Lords of Parliament, and to their franchise and liberty by the ancient custom of the Parliament, to be

judges in such cases, and in these cases to judge by the assent of the King; and thus it shall be done in this case, by the award of Parliament: because the realm of England has not been heretofore, nor is it the intention of our said lord the King and the Lords of Parliament that it ever should be governed by the Law Civil; and also, it is their resolution not to rule or govern so high a cause as this appeal is, which cannot be tried anywhere but in Parliament, as hath been said before, by the course, process, and order used in any courts or place inferior in the same kingdom; which courts and places are not more than the executors of the ancient laws and customs of the kingdom, and of the ordinances and establishments of Parliament. It was determined by the said Lords of Parliament, by the assent of our said lord the King, that this appeal was made and pleaded well and sufficiently, and that the process upon it is good and effectual, according to the law and course of Parliament; and for such they decree and adjudge it." *

And your Committee finds, that toward the close of the same Parliament the same right was again claimed and admitted as the special privilege of the Peers, in the following manner: — "In this Parliament, all the Lords then present, Spiritual as well as Temporal, claimed as their franchise, that the weighty matters moved in this Parliament, and which shall be moved in other Parliaments in future times, touching the peers of the land, shall be managed, adjudged, and discussed by the course of Parliament, and in no sort by the Law Civil, or by the common law of the land, used in the other lower courts of the kingdom; which claim, liberty, and franchise the King gra

* Rolls Parl. Vol. III. p. 236.

ciously allowed and granted to them in full Parliament."*

Your Committee finds that the Commons, having at that time considered the appeal above mentioned, approved the proceedings in it, and, as far as in them lay, added the sanction of their accusation against the persons who were the objects of the appeal. They also, immediately afterwards, impeached all the Judges of the Common Pleas, the Chief Baron of the Exchequer, and other learned and eminent persons, both peers and commoners; upon the conclusion of which impeachments it was that the second claim was entered. In all the transactions aforesaid the Commons were acting parties; yet neither then nor ever since have they made any objection or protestation, that the rule laid down by the Lords in the beginning of the session of 1388 ought not to be applied to the impeachments of commoners as well as peers. In many cases they have claimed the benefit of this rule; and in all cases they have acted, and the Peers have determined, upon the same general principles. The Peers have always supported the same franchises; nor are there any precedents upon the records of Parliament subverting either the general rule or the particular privilege, so far as the same relates either to the course of proceeding or to the rule of law by which the Lords are to judge.

Your Committee observes also, that, in the commissions to the several Lords High Stewards who have been appointed on the trials of peers impeached by the Commons, the proceedings are directed to be had according to the law and custom of the kingdom, *and the custom of Parliament:* which words are not

* Rol. Parl. Vol. III. p. 244, § 7.

to be found in the commissions for trying upon indictments.

"As every court of justice," says Lord Coke, "hath laws and customs for its direction, some by the Common Law, some by the Civil and Canon Law, some by peculiar laws and customs, &c., so the High Court of Parliament *suis propriis legibus et consuetudinibus subsistit.* It is by the *Lex et Consuetudo Parliamenti*, that all weighty matters in any Parliament moved, concerning the peers of the realm, or Commons in Parliament assembled, ought to be determined, adjudged, and discussed, by the course of the Parliament, and not by the Civil Law, nor yet by the common laws of this realm used in more inferior courts." And after founding himself on this very precedent of the 11th of Richard II., he adds, "*This is the reason that Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the common laws, but secundum Legem et Consuetudinem Parliamenti: and so the Judges in divers Parliaments have confessed.*" *

RULE OF PLEADING.

YOUR Committee do not find that any rules of pleading, as observed in the inferior courts, have ever obtained in the proceedings of the High Court of Parliament, in a cause or matter in which the whole procedure has been within their original jurisdiction. Nor does your Committee find that any demurrer or exception, as of false or erroneous pleading, hath been ever admitted to any impeachment in Parliament, as not coming within the form of the pleading; and although a reservation or protest is made by the defend-

* 4 Inst. p. 15.

ant (matter of form, as we conceive) "to the generality, uncertainty, and insufficiency of the articles of impeachment," yet no objections have in fact been ever made in any part of the record; and when verbally they have been made, (until this trial,) they have constantly been overruled.

The trial of Lord Strafford* is one of the most important eras in the history of Parliamentary judicature. In that trial, and in the dispositions made preparatory to it, the process on impeachments was, on great consideration, research, and selection of precedents, brought very nearly to the form which it retains at this day; and great and important parts of Parliamentary Law were then laid down. The Commons at that time made new charges or amended the old as they saw occasion. Upon an application from the Commons to the Lords, that the examinations taken by their Lordships, at their request, might be delivered to them, for the purpose of a more exact specification of the charge they had made, on delivering the message of the Commons, Mr. Pym, amongst other things, said, as it is entered in the Lords' Journals, "According to the clause of reservation in the conclusion of their charge, they [the Commons] will add to the charges, not to the matter in respect of comprehension, extent, or kind, but only to reduce them to more particularities, that the Earl of Strafford might answer with the more clearness and expedition: *not that they are bound by this way of SPECIAL charge; and therefore they have taken care in their House, upon protestation, that this shall be no prejudice to bind them from proceeding in GENERAL in other cases, and that they are not to be ruled by pro-*

* 16 Ch. I. 1640.

ceedings in other courts, which protestation they have made for the preservation of the power of Parliament; and they desire that the like care may be had in your Lordships' House."* This protestation is entered on the Lords' Journals. Thus careful were the Commons that no exactness used by them for a temporary accommodation should become an example derogatory to the larger rights of Parliamentary process.

At length the question of their being obliged to conform to any of the rules below came to a formal judgment. In the trial of Dr. Sacheverell, March 10th, 1709, the Lord Nottingham "desired their Lordships' opinion, whether he might propose a question to the Judges *here* [in Westminster Hall]. Thereupon the Lords, being moved to adjourn, adjourned to the House of Lords, and on debate," as appears by a note, "it was agreed that the question should be proposed in Westminster Hall."† Accordingly, when the Lords returned the same day into the Hall, the question was put by Lord Nottingham, and stated to the Judges by the Lord Chancellor: "Whether, by the *law of England*, and constant practice in all prosecutions by *indictment and information* for crimes and misdemeanors by writing or speaking, the particular words supposed to be written or spoken must not be expressly specified in the indictment or information?" On this question the Judges, *seriatim*, and in open court, delivered their opinion: the substance of which was, "That, by the laws of England, and the constant practice in Westminster Hall, the words ought to be expressly specified in the indictment or information." Then the Lords adjourned, and did

* Lords' Journals, Vol. IV. p. 133.

† Id. Vol. XIX. p. 98.

not come into the Hall until the 20th. In the intermediate time they came to resolutions on the matter of the question put to the Judges. Dr. Sacheverell, being found guilty, moved in arrest of judgment upon two points. The first, which he grounded on the opinion of the Judges, and which your Committee thinks most to the present purpose, was, "That no entire clause, or sentence, or expression, in either of his sermons or dedications, is particularly set forth in his impeachment, which he has already heard the Judges declare to be necessary in all cases of indictments or informations."* On this head of objection, the Lord Chancellor, on the 23d of March, agreeably to the resolutions of the Lords of the 14th and 16th of March, acquainted Dr. Sacheverell, "That, on occasion of the question before put to the Judges *in Westminster Hall*, and their answer thereto, their Lordships had fully debated and considered of that matter, and had come to the following resolution: 'That this House will proceed to the determination of the impeachment of Dr. Henry Sacheverell, according to the *law of the land, and the law and usage of Parliament.*' And afterwards to this resolution: 'That, by *the law and usage of Parliament* in prosecutions for high crimes and misdemeanors by writing or speaking, the particular words supposed to be criminal are *not necessary* to be expressly specified in such impeachment.' So that, in their Lordships' opinion, the law and usage of the High Court of Parliament being *a part of the law of the land*, and that usage not requiring that words should be exactly specified in impeachments, the answer of the Judges, which related only to the course of *indict-*

* Lords' Journals, Vol. XIX. p. 116.

ments and informations, does not in the least affect your case."*

On this solemn judgment concerning the law and usage of Parliament, it is to be remarked: First, that the impeachment itself is not to be presumed inartificially drawn. It appears to have been the work of some of the greatest lawyers of the time, who were perfectly versed in the manner of pleading in the courts below, and would naturally have imitated their course, if they had not been justly fearful of setting an example which might hereafter subject the plainness and simplicity of a Parliamentary proceeding to the technical subtilties of the inferior courts. Secondly, that the question put to the Judges, and their answer, were strictly confined to the law and practice below; and that nothing in either had a tendency to their delivering an opinion concerning Parliament, its laws, its usages, its course of proceeding, or its powers. Thirdly, that the motion in arrest of judgment, grounded on the opinion of the Judges, was made only by Dr. Sacheverell himself, and not by his counsel, men of great skill and learning, who, if they thought the objections had any weight, would undoubtedly have made and argued them.

Here, as in the case of the 11th King Richard II., the Judges declared unanimously, that such an objection would be fatal to such a pleading in any indictment or information; but the Lords, as on the former occasion, overruled this objection, and held the article to be good and valid, notwithstanding the report of the Judges concerning the mode of proceeding in the courts below.

Your Committee finds that a protest, with reasons

* Lords' Journals, Vol. XIX. p. 121.

at large, was entered by several lords against this determination of their court.* It is always an advantage to those who protest, that their reasons appear upon record; whilst the reasons of the majority, who determine the question, do not appear. This would be a disadvantage of such importance as greatly to impair, if not totally to destroy, the effect of precedent as authority, if the reasons which prevailed were not justly presumed to be more valid than those which have been obliged to give way: the former having governed the final and conclusive decision of a competent court. But your Committee, combining the fact of this decision with the early decision just quoted, and with the total absence of any precedent of an objection, before that time or since, allowed to pleading, or what has any relation to the rules and principles of pleading, as used in Westminster Hall, has no doubt that the House of Lords was governed in the 9th of Anne by the very same principles which it had solemnly declared in the 11th of Richard II.

But besides the presumption in favor of the reasons which must be supposed to have produced this solemn judgment of the Peers, contrary to the practice of the courts below, as declared by all the Judges, it is probable that the Lords were unwilling to take a step which might admit that anything in that practice should be received as their rule. It must be observed, however, that the reasons against the article alleged in the protest were by no means solely bottomed in the practice of the courts below, as if the main reliance of the protesters was upon that usage. The protesting minority maintained that it was not agreeable to *several precedents in Parliament;* of which

* Lords' Journals, Vol. XIX. p. 106.

they cited many in favor of their opinion. It appears by the Journals, that the clerks were ordered to search for precedents, and a committee of peers was appointed to inspect the said precedents, and to report upon them, — and that they did inspect and report accordingly. But the report is not entered on the Journals. It is, however, to be presumed that the greater number and the better precedents supported the judgment. Allowing, however, their utmost force to the precedents there cited, they could serve only to prove, that, in the case of *words*, (to which alone, and not the case of a *written* libel, the precedents extended,) such a special averment, according to the tenor of the words, had been used; but not that it was necessary, or that ever any plea had been rejected upon such an objection. As to the course of Parliament, resorted to for authority in this part of the protest, the argument seems rather to affirm than to deny the general proposition, that its own course, and not that of the inferior courts, had been the rule and law of Parliament.

As to the objection, taken in the protest, drawn from natural right, the Lords knew, and it appears in the course of the proceeding, that the whole of the libel had been read at length, as appears from p. 655 to p. 666.* So that Dr. Sacheverell had *substantially* the same benefit of anything which could be alleged in the extenuation or exculpation as if his libellous sermons had been entered *verbatim* upon the recorded impeachment. It was adjudged sufficient to state the crime *generally* in the impeachment. The libels were given *in evidence;* and it was not then thought of, that nothing should be given in

* State Trials, Vol. V.

evidence which was not specially charged in the impeachment.

But whatever their reasons were, (great and grave they were, no doubt,) such as your Committee has stated it is the *judgment* of the Peers on the Law of Parliament, as a part of the law of the land. It is the more forcible as concurring with the judgment in the 11th of Richard II., and with the total silence of the Rolls and Journals concerning any objection to pleading ever being suffered to vitiate an impeachment, or to prevent evidence being given upon it, on account of its generality, or any other failure.

Your Committee do not think it probable, that, even before this adjudication, the rules of pleading below could ever have been adopted in a Parliamentary proceeding, when it is considered that the several statutes of Jeofails, not less than twelve in number,* have been made for the correction of an overstrictness in pleading, to the prejudice of substantial justice: yet in no one of these is to be discovered the least mention of any proceeding in Parliament. There is no doubt that the legislature would have applied its remedy to that grievance in Parliamen tary proceedings, if it had found those proceedings embarrassed with what Lord Mansfield, from the bench, and speaking of the matter of these statutes, very justly calls "disgraceful subtilties."

What is still more strong to the point, your Committee finds that in the 7th of William III. an act was made for the regulating of trials for treason and misprision of treason, containing several regulations for reformation of proceedings at law, both as to

* Statutes at Large, from 12 Ed. I. to 16 and 17 Ch. II.

matters of form and substance, as well as relative to evidence. It is an act thought most essential to the liberty of the subject; yet in this high and critical matter, so deeply affecting the lives, properties, honors, and even the inheritable blood of the subject, the legislature was so tender of the high powers of this high court, deemed so necessary for the attainment of the great objects of its justice, so fearful of enervating any of its means or circumscribing any of its capacities, even by rules and restraints the most necessary for the inferior courts, that they guarded against it by an express proviso, "that neither this act, nor anything therein contained, shall any ways extend to *any impeachment or other proceedings in Parliament, in any kind whatsoever.*" *

CONDUCT OF THE COMMONS IN PLEADING.

THIS point being thus solemnly adjudged in the case of Dr. Sacheverell, and the principles of the judgment being in agreement with the whole course of Parliamentary proceedings, the Managers for this House have ever since considered it as an indispensable duty to assert the same principle, in all its latitude, upon all occasions on which it could come in question, — and to assert it with an energy, zeal, and earnestness proportioned to the magnitude and importance of the interest of the Commons of Great Britain in the religious observation of the rule, *that the Law of Parliament, and the Law of Parliament only, should prevail in the trial of their impeachments.*

In the year 1715 (1 Geo. I.) the Commons thought

* 7 W. III. ch. 3, sect. 12.

proper to impeach of high treason the lords who had entered into the rebellion of that period. This was about six years after the decision in the case of Sacheverell. On the trial of one of these lords, (the Lord Wintoun,*) after verdict, the prisoner moved in arrest of judgment, and excepted against the impeachment for error, on account of the treason therein laid "not being described with sufficient certainty, — the day on which the treason was committed not having been alleged." His counsel was heard to this point. They contended, "that the forfeitures in cases of treason are very great, and therefore they humbly conceived that the accusation ought to contain all the certainty it is capable of, that the prisoner may not by *general allegations* be rendered incapable to defend himself in a case which may prove fatal to him: that they would not trouble their Lordships with citing authorities; for they believed there is not one gentleman of the long robe but will agree that an indictment for any capital offence to be erroneous, if the offence be not alleged to be committed on a certain day: that this impeachment set forth only that in or about the months of September, October, or November, 1715, the offence charged in the impeachment had been committed." The counsel argued, "that a proceeding by impeachment is a proceeding at the Common Law, for *Lex Parliamentaria* is a part of Common Law, and they submitted whether there is not the same certainty required in one method of proceeding at Common Law as in another."

The matter was argued elaborately and learnedly, not only on the general principles of the proceedings

* State Trials, Vol. VI. p. 17.

below, but on the inconvenience and possible hardships attending this uncertainty. They quoted Sacheverell's case, in whose impeachment "the precise days were laid when the Doctor preached each of these two sermons; and that by a like reason a certain day ought to be laid in the impeachment when this treason was committed; and that the authority of Dr. Sacheverell's case seemed so much stronger than the case in question as the crime of treason is higher than that of a misdemeanor."

Here the Managers for the Commons brought the point a second time to an issue, and that on the highest of capital cases: an issue, the event of which was to determine forever whether their impeachments were to be regulated by the law as understood and observed in the inferior courts. Upon the usage below there was no doubt; the indictment would unquestionably have been quashed. But the Managers for the Commons stood forth upon this occasion with a determined resolution, and no less than four of them *seriatim* rejected the doctrine contended for by Lord Wintoun's counsel. They were all eminent members of Parliament, and three of them great and eminent lawyers, namely, the then Attorney-General, Sir William Thomson, and Mr. Cowper.

Mr. Walpole said,—"Those learned gentlemen [Lord Wintoun's counsel] *seem to forget in what court they are.* They have taken up so much of your Lordships' time in quoting of authorities, and using arguments to show your Lordships what would quash an indictment in *the courts below*, that they seemed to forget they are now in *a Court of Parliament, and on an impeachment of the Commons of Great Britain.* For, should the Commons admit all that they have offered,

it will not follow that the impeachment of the Commons is insufficient; and I must observe to your Lordships, that neither of the learned gentlemen have offered to produce one instance relative to an impeachment. I mean to show that the sufficiency of an impeachment was never called in question for the generality of the charge, or that any instance of that nature was offered at before. The Commons don't conceive, that, if this exception would quash an indictment, it would therefore make the impeachment insufficient. I hope it never will be allowed here as a reason, that what quashes an indictment in the courts below will make insufficient an impeachment brought by the Commons of Great Britain."

The Attorney-General supported Mr. Walpole in affirmance of this principle. He said,—"I would follow the steps of the learned gentleman who spoke before me, and I think he has given a good answer to these objections. I would take notice that we are upon an impeachment, not upon an indictment. The courts below have set forms to themselves, which have prevailed for a long course of time, and thereby are become the forms by which those courts are to govern themselves; but it never was thought that the forms of those courts had any influence on the proceedings of Parliament. In Richard II.'s time, it is said in the records of Parliament, that proceedings in Parliament are not to be governed by the forms of Westminster Hall. We are in the case of an impeachment, and in the Court of Parliament. Your Lordships have already given judgment against six upon this impeachment, and it is warranted by the precedents in Parliament; therefore we insist that the articles are good in substance."

Mr. Cowper.—"They [the counsel] cannot but know that the usages of Parliaments are part of the laws of the land, although they differ in many instances from the Common Law, as practised in the inferior courts, in point of form. My Lords, if the Commons, in preparing articles of impeachment, should govern themselves by precedents of indictments, in my humble opinion they would depart from the ancient, nay, the constant, usage and practice of Parliament. It is well known that the form of an impeachment has very little resemblance to that of an indictment; and I believe the Commons will endeavor to preserve the difference, by adhering to their own precedents."

Sir William Thomson.—"We must refer to the forms and proceedings in the Court of Parliament, and which must be owned to be part of the law of the land. It has been mentioned already to your Lordships, that the precedents in impeachments are not so nice and precise in form as in the inferior courts; and we presume your Lordships will be governed by the forms of your own court, (especially forms that are not essential to justice,) as the courts below are by theirs: which courts differ one from the other in many respects as to their forms of proceedings, and the practice of each court is esteemed as the law of that court."

The Attorney-General in reply maintained his first doctrine. "There is no uncertainty in it *that can be to the prejudice of the prisoner:* we insist, it is according to *the forms of Parliament:* he has pleaded to it, and your Lordships have found him guilty."

The opinions of the Judges were taken in the House of Lords, on the 19th of March, 1715, upon two questions which had been argued in arrest of judgment,

grounded chiefly on the practice of the courts below. To the first the Judges answered, — "*It is necessary* that there be a *certain* day laid in such indictments, on which the fact is alleged to be committed; and that alleging in such indictments that the fact was committed at or about a certain day would not be sufficient." To the second they answered, "that, although a day certain, when the fact is supposed to be done, be alleged in such indictments, yet it is not necessary upon the trial to prove the fact to be committed upon *that day;* but it is sufficient, if proved to be done *on any other day before* the indictment found."

Then it was "agreed by the House, and ordered, that the Lord High Steward be directed to acquaint the prisoner at the bar in Westminster Hall, 'that the Lords have considered of the matters moved in arrest of judgment, and are of opinion that they are not sufficient to arrest the same, but that the *impeachment* is sufficiently certain in point of time *according to the form of impeachments in Parliament.*'"*

On this final adjudication, (given after solemn argument, and after taking the opinion of the Judges,) in affirmance of the Law of Parliament against the undisputed usage of the courts below, your Committee has to remark, — 1st, The preference of the custom of Parliament to the usage below. By the very latitude of the charge, the Parliamentary accusation gives the prisoner fair notice to prepare himself upon all points: whereas there seems something insnaring in the proceedings upon indictment, which, fixing the specification of a day certain for the treason or felony as absolutely necessary in the charge,

* Lords' Journals, Vol. XX. p. 316.

gives notice for preparation only on *that day*, whilst the prosecutor has the whole range of time antecedent to the indictment to allege and give evidence of facts against the prisoner. It has been usual, particularly in later indictments, to add, "at several other times"; but the strictness of naming one day is still necessary, and the want of the larger words would not quash the indictment. 2dly, A comparison of the extreme rigor and exactness required in the more *formal* part of the proceeding (the indictment) with the extreme laxity used in the *substantial* part (that is to say, the evidence received to prove the fact) fully demonstrates that the partisans of those forms would put shackles on the High Court of Parliament, with which they are not willing, or find it wholly impracticable, to bind themselves. 3dly, That the latitude of departure from the letter of the indictment (which holds in other matters besides this) is in appearance much more contrary to natural justice than anything which has been objected against the evidence offered by your Managers, under a pretence that it exceeded the limits of pleading. For, in the case of indictments below, it must be admitted that the prisoner may be unprovided with proof of an alibi, and other material means of defence, or may find some matters unlooked-for produced against him, by witnesses utterly unknown to him: whereas nothing was offered to be given in evidence, under any of the articles of this impeachment, except such as the prisoner must have had perfect knowledge of; the whole consisting of matters sent over by himself to the Court of Directors, and authenticated under his own hand. No substantial injustice or hardship of any kind could arise from

our evidence under our pleading: whereas in theirs very great and serious inconveniencies might happen.

Your Committee has further to observe, that, in the case of Lord Wintoun, as in the case of Dr. Sacheverell, the Commons had in their Managers persons abundantly practised in the law, as used in the inferior jurisdictions, who could easily have followed the precedents of indictments, if they had not purposely, and for the best reasons, avoided such precedents.

A great writer on the criminal law, Justice Foster, in one of his Discourses,* fully recognizes those principles for which your Managers have contended, and which have to this time been uniformly observed in Parliament. In a very elaborate reasoning on the case of a trial in Parliament, (the trial of those who had murdered Edward II.,) he observes thus: — "It is *well known*, that, in *Parliamentary* proceedings of this kind, *it is, and ever was*, sufficient that matters appear with proper light and certainty to *a common understanding*, without that minute exactness which is required in criminal proceedings in Westminster Hall. In these cases the rule has always been, *Loquendum ut vulgus*." And in a note he says, — "In the proceeding against Mortimer, in this Parliament, *so little regard was had to the forms used in legal proceedings*, that he who had been frequently summoned to Parliament as a baron, and had lately been created Earl of March, is styled through the whole record merely Roger de Mortimer."

The departure from the common forms in the first case alluded to by Foster (viz., the trial of Berkeley,

* Discourse IV. p. 389.

Maltravers, &c., for treason, in the murder of Edward II.*) might be more plausibly attacked, because they were tried, though in Parliament, by a jury of freeholders: which circumstance might have given occasion to justify a nearer approach to the forms of indictments below. But no such forms were observed, nor in the opinion of this able judge ought they to have been observed.

PUBLICITY OF THE JUDGES' OPINIONS.

It appears to your Committee, that, from the 30th year of King Charles II. until the trial of Warren Hastings, Esquire, in all trials in Parliament, as well upon impeachments of the Commons as on indictments brought up by *Certiorari*, when any matter of law hath been agitated at the bar, or in the course of trial hath been stated by any lord in the court, it hath been the prevalent custom to state the same in open court. Your Committee has been able to find, since that period, no more than one precedent (and that a precedent rather in form than in substance) of the opinions of the Judges being taken privately, except when the case on both sides has been closed, and the Lords have retired to consider of their verdict or of their judgment thereon. Upon the soundest and best precedents, the Lords have improved on the principles of publicity and equality, and have called upon the parties severally to argue the matter of law, previously to a reference to the Judges, who, on their parts, have afterwards, *in open court*, delivered their opinions, often by the mouth of one of the Judges, speaking for himself and the

* Parl. Rolls, Vol. II. p. 57. 4 Ed. III. A. D. 1330.

rest, and in their presence: and sometimes all the Judges have delivered their opinion *seriatim*, (even when they have been unanimous in it,) together with their reasons upon which their opinion had been founded. This, from the most early times, has been the course in all judgments in the House of Peers. Formerly even the record contained the reasons of the decision. "The reason wherefore," said Lord Coke, "the records of Parliaments have been so highly extolled is, that therein is set down, in cases of difficulty, not only the judgment and resolution, but *the reasons and causes of the same* by so great advice."*

In the 30th of Charles II., during the trial of Lord Cornwallis,† on the suggestion of a question in law to the Judges, Lord Danby demanded of the Lord High Steward, the Earl of Nottingham, "whether it would be proper here [in open court] to ask the question of your Grace, or to propose it to the Judges?" The Lord High Steward answered, — "If your Lordships doubt of anything whereon a question in law ariseth, the latter opinion, and the *better* for the prisoner, is, *that it must be stated in the presence of the prisoner, that he may know whether the question be truly put.* It hath *sometimes* been practised otherwise, and the Peers have sent for the Judges, and have asked their opinion in private, and have come back, and have given their verdict according to that opinion; and there is scarcely a precedent of its being otherwise done. There is a later authority in print that doth settle the point so as I tell you, and I do conceive *it ought to be followed;* and it being

* Coke, 4 Inst. p. 3.

† State Trials, Vol. II. p. 725. A. D. 1678.

safer for the prisoner, my humble opinion to your Lordship is, that he ought to be present at *the stating of the question.* Call the *prisoner.*" The prisoner, who had withdrawn, again appearing, he said, — "My Lord Cornwallis, my Lords the Peers, since they have withdrawn, have conceived a doubt in some matter [of law arising upon the matter] of fact in your case; and they have that tender regard of a prisoner at the bar, *that they will not suffer a case to be put up in his absence,* lest it should chance to prejudice him by being *wrong stated.*" Accordingly the question was both put and the Judges' answer given publicly and in his presence.

Very soon after the trial of Lord Cornwallis, the impeachment against Lord Stafford was brought to a hearing, — that is, in the 32d of Charles II. In that case the lord at the bar having stated a point of law, "touching the necessity of two witnesses to an overt act in case of treason," the Lord High Steward told Lord Stafford, that "all the Judges that assist them, *and are here in your Lordship's presence and hearing,* should deliver their opinions whether it be doubtful and disputable or not." Accordingly the Judges delivered their opinion, and each argued it (though they were all agreed) *seriatim* and *in open court.* Another abstract point of law was also proposed from the bar, on the same trial, concerning the legal sentence in high treason; and in the same manner the Judges on reference delivered their opinion *in open court;* and no objection was taken to it as anything new or irregular.*

In the 1st of James II. came on a remarkable trial of a peer, — the trial of Lord Delamere. On that

* State Trials, Vol. III. p. 212.

occasion a question of law was stated. There also, in conformity to the precedents and principles given on the trial of Lord Cornwallis, and the precedent in the impeachment of Lord Stafford, the then Lord High Steward took care that the opinion of the Judges should be given in open court.

Precedents grounded on principles so favorable to the fairness and equity of judicial proceedings, given in the reigns of Charles II. and James II., were not likely to be abandoned after the Revolution. The first trial of a peer which we find after the Revolution was that of the Earl of Warwick.

In the case of the Earl of Warwick, 11 Will. III., a question in law upon evidence was put to the Judges; the statement of the question was made in open court by the Lord High Steward, Lord Somers: — "If there be six in company, and one of them is killed, the other five are afterwards indicted, and three are tried and found guilty of manslaughter, and upon their prayers have their clergy allowed, and the burning in the hand is respited, but not pardoned, — whether any of the three can be a witness on the trial of the other two?"

Lord Halifax. — "I suppose your Lordships will have the opinion of the Judges upon this point: *and that must be in the presence of the prisoner.*"

Lord High Steward (Lord Somers). — "*It must certainly be in the presence of the prisoner*, if you ask the Judges' opinions."*

In the same year, Lord Mohun was brought to trial upon an indictment for murder. In this single trial a greater number of questions was put to the Judges in matter of law than probably was ever referred to

* State Trials, Vol. V. p. 169.

the Judges in all the collective body of trials, before or since that period. That trial, therefore, furnishes the largest body of authentic precedents in this point to be found in the records of Parliament. The number of questions put to the Judges in this trial was twenty-three. They all originated from the Peers themselves; yet the Court called upon the party's counsel, as often as questions were proposed to be referred to the Judges, as well as on the counsel for the Crown, to argue every one of them *before* they went to those learned persons. Many of the questions accordingly were argued at the bar at great length. The opinions were given and argued *in open court.* Peers frequently insisted that the Judges should give their opinions *seriatim*, which they did always publicly in the court, with great gravity and dignity, and greatly to the illustration of the law, as they held and acted upon it in their own courts.*

In Sacheverell's case (just cited for another purpose) the Earl of Nottingham demanded whether he might not propose a question of law to the Judges *in open court.* It was agreed to; and the Judges gave their answer *in open court*, though this was after verdict given: and in consequence of the advantage afforded to the prisoner in hearing *the opinion* of the Judges, he was thereupon enabled to move in arrest of judgment.

The next precedent which your Committee finds of a question put by the Lords, sitting as a court of judicature, to the Judges, pending the trial, was in the 20th of George II., when Lord Balmerino, who was tried on an indictment for high treason, having raised a doubt whether the evidence proved him to be at the

* State Trials, Vol. IV. from p. 538 to 552.

place assigned for the overt act of treason on the day laid in the indictment, the point was argued at the bar by the counsel for the Crown in the prisoner's presence, and for his satisfaction. The prisoner, on hearing the argument, waived his objection; but the then Lord President moving their Lordships to adjourn to the Chamber of Parliament, the Lords adjourned accordingly, and after some time returning into Westminster Hall, the Lord High Steward (Lord Hardwicke) said, —

"Your Lordships were pleased, in the Chamber of Parliament, to come to a resolution that the opinion of the learned and reverend Judges should be taken on the following question, namely, Whether it is necessary that an overt act of high treason should be proved to have been committed on the particular day laid in the indictment? Is it your Lordships' pleasure that the Judges do now give their opinion on that question?"

Lords. — "Ay, ay."

Lord High Steward. — "My Lord Chief-Justice!"

Lord Chief-Justice (Lord Chief-Justice Lee). — "The question proposed by your Lordships is, Whether it be necessary that an overt act of high treason should be proved to be committed on the particular day laid in the indictment? We are all of opinion that it is not necessary to prove the overt act to be committed on the particular day laid in the indictment; but as evidence may be given of an overt act before the day, so it may be after the day specified in the indictment; for the day laid is circumstance and form only, and not material in point of proof: this is the known constant course of proceeding in trials."

Here the case was made for the Judges, for the sat-

isfaction of one of the Peers, after the prisoner had waived his objection. Yet it was thought proper, as a matter of course and of right, that the Judges should state the question put to them in the open court, and in presence of the prisoner, — and that in the same open manner, and in the same presence, their answer should be delivered.*

Your Committee concludes their precedents begun under Lord Nottingham and ended under Lord Hardwicke. They are of opinion that a body of precedents so uniform, so accordant with principle, made in such times, and under the authority of a succession of such great men, ought not to have been departed from. The single precedent to the contrary, to which your Committee has alluded above, was on the trial of the Duchess of Kingston, in the reign of his present Majesty. But in that instance the reasons of the Judges were, by order of the House, delivered in writing, and entered at length on the Journals: † so that the legal principle of the decision is equally to be found: which is not the case in any one instance of the present impeachment.

The Earl of Nottingham, in Lord Cornwallis's case, conceived, though it was proper and agreeable to justice, that this mode of putting questions to the Judges and receiving their answer in public was not supported by former precedents; but he thought a book of authority had declared in favor of this course. Your Committee is very sensible, that, antecedent to the great period to which they refer, there are instances of questions having been put to the Judges privately. But we find the *principle* of publicity (whatever

* State Trials, Vol. IX. p 606*. Die Lunæ, 28° Julii 1746.
† Id., Vol. XI. p. 262.

variations from it there might be in practice) to have been so clearly established at a more early period, that all the Judges of England resolved in Lord Morley's trial, in the year 1666, (about twelve years before the observation of Lord Nottingham,) *on a supposition that the trial should be actually concluded, and the Lords retired to the Chamber of Parliament to consult on their verdict*, that even in that case, (much stronger than the observation of your Committee requires for its support,) if their opinions should then be demanded by the Peers, for the information of their private conscience, yet they determined that they should be given in public. This resolution is in itself so solemn, and is so bottomed on constitutional principle and legal policy, that your Committee have thought fit to insert it *verbatim* in their Report, as they relied upon it at the bar of the Court, when they contended for the same publicity.

"It was resolved, that, in case the Peers who are triers, *after the evidence given, and the prisoner withdrawn, and they gone to consult of the verdict*, should desire to speak with any of the Judges, to have their opinion upon any point of law, that, if the Lord Steward spoke to us to go, we should go to them; but when the Lords asked us any question, we should not deliver any private opinion, but let them know *we were not to deliver any private opinion without conference with the rest of the Judges, and that to be done openly in court; and this (notwithstanding the precedent in the case of the Earl of Castlehaven) was thought prudent in regard of ourselves, as well as for the avoiding suspicion which might grow by private opinions: ALL resolutions of Judges being ALWAYS done in public.*" *

* Kelyng's Reports, p. 54.

The Judges in this resolution overruled the authority of the precedent, which militated against the whole spirit of their place and profession. Their declaration was without reserve or exception, that "*all* resolutions of the Judges are *always* done in public." These Judges (as should be remembered to their lasting honor) did not think it derogatory from their dignity, nor from their duty to the House of Lords, to take such measures concerning the publicity of their resolutions as should secure them from suspicion. They knew that the mere circumstance of privacy in a judicature, where any publicity is in use, tends to beget suspicion and jealousy. Your Committee is of opinion that the honorable policy of avoiding suspicion by avoiding privacy is not lessened by anything which exists in the present time and in the present trial.

Your Committee has here to remark, that this learned Judge seemed to think the case of Lord Audley (Castlehaven) to be more against him than in truth it was. The precedents were as follow. The opinions of the Judges were taken three times: the first time by the Attorney-General at Serjeants' Inn, antecedent to the trial; the last time, after the Peers had retired to consult on their verdict; the middle time *was during the trial itself:* and here the opinion was taken in open court, agreeably to what your Committee contends to have been the usage ever since this resolution of the Judges.* What was done before seemed to have passed *sub silentio*, and possibly through mere inadvertence.

Your Committee observes, that the precedents by them relied on were furnished from times in which

* Rushworth, Vol. II. pp. 93, 94, 95, 100.

the judicial proceedings in Parliament, and in all our courts, had obtained a very regular form. They were furnished at a period in which Justice Blackstone remarks that more laws were passed of importance to the rights and liberties of the subject than in any other. These precedents lean all one way, and carry no marks of accommodation to the variable spirit of the times and of political occasions. They are the same before and after the Revolution. They are the same through five reigns. The great men who presided in the tribunals which furnished these examples were in opposite political interests, but all distinguished for their ability, integrity, and learning.

The Earl of Nottingham, who was the first on the bench to promulgate this publicity as a rule, has not left us to seek the principle in the case: that very learned man considers the publicity of the questions and answers as a matter of justice, *and of justice favorable to the prisoner*. In the case of Mr. Hastings, the prisoner's counsel did not join your Committee in their endeavors to obtain the publicity we demanded. Their reasons we can only conjecture. But your Managers, acting for this House, were not the less bound to see that the due Parliamentary course should be pursued, even when it is most favorable to those whom they impeach. If it should answer the purposes of one prisoner to waive the rights which belong to all prisoners, it was the duty of your Managers to protect those general rights against that particular prisoner. It was still more their duty to endeavor that their *own* questions should not be erroneously stated, or cases put which varied from those which they argued, or opinions given in a manner not supported by the spirit of our

laws and institutions or by analogy with the practice of all our courts.

Your Committee, much in the dark about a matter in which it was so necessary that they should receive every light, have heard, that, in debating this matter abroad, it has been objected, that many of the precedents on which we most relied were furnished in the courts of the Lord High Steward, and not in trials where the Peers were Judges, — and that the Lord High Steward not having it in his power to retire with the juror Peers, the Judges' opinions, from necessity, not from equity to the parties, were given before that magistrate.

Your Committee thinks it scarcely possible that the Lords could be influenced by such a feeble argument. For, admitting the fact to have been as supposed, there is no sort of reason why so uniform a course of precedents, in a legal court composed of a peer for judge and peers for triers, a course so favorable to all parties and to equal justice, a course in concurrence with the procedure of all our other courts, should not have the greatest authority over their practice in every trial before *the whole body* of the peerage.

The Earl of Nottingham, who acted as High Steward in one of these commissions, certainly knew what he was saying. He gave no such reason. His argument for the publicity of the Judges' opinions did not turn at all on the nature of his court, or of his office in that court. It rested on the equity of the principle, and on the fair dealing due to the prisoner.

Lord Somers was in no such court; yet his declaration is full as strong. He does not, indeed, argue the point, as the Earl of Nottingham did, when he

considered it as a new case. Lord Somers considers it as a point quite settled, and no longer standing in need of being supported by reason or precedent.

But it is a mistake that the precedents stated in this Report are wholly drawn from proceedings in that kind of court. Only two are cited which are furnished from a court constituted in the manner supposed. The rest were in trials by all the peers, and not by a jury of peers with an High Steward.

After long discussions with the Peers on this subject, "the Lords' committees in a conference told them (the committee of this House, appointed to a conference on the matter) that the High Steward is but Speaker *pro tempore*, and giveth his vote as well as the other lords: this changeth not the nature of the court. And the Lords declared, that they have power enough to proceed to trial, though the King should not name an High Steward." On the same day, "it is declared and ordered by the Lords Spiritual and Temporal in Parliament assembled, that the office of High Steward on trials of peers upon impeachments is not necessary to the House of Peers, but that the Lords may proceed in such trials, if an High Steward is not appointed according to their humble desire."*

To put the matter out of all doubt, and to remove all jealousy on the part of the Commons, the commission of the Lord High Steward was then altered.

These rights, contended for by the Commons in their impeachments, and admitted by the Peers, were asserted in the proceedings preparatory to the trial of Lord Stafford, in which that long chain of uniform precedents with regard to the publicity of the Judges' opinions in trials begins.

* Foster's Crown Law, p. 145.

For these last citations, and some of the remarks, your Committee are indebted to the learned and upright Justice Foster. They have compared them with the Journals, and find them correct. The same excellent author proceeds to demonstrate that whatever he says of trials by impeachment is equally applicable to trials before the High Steward on indictment; and consequently, that there is no ground for a distinction, with regard to the public declaration of the Judges' opinions, founded on the inapplicability of either of these cases to the other. The argument on this whole matter is so satisfactory that your Committee has annexed it at large to their Report.* As there is no difference in fact between these trials, (especially since the act which provides that all the peers shall be summoned to the trial of a peer,) so there is no difference in the reason and principle of the publicity, let the matter of the Steward's jurisdiction be as it may.

PUBLICITY GENERAL.

YOUR Committee do not find any positive law which binds the judges of the courts in Westminster Hall publicly to give a reasoned opinion from the bench, in support of their judgment upon matters that are stated before them. But the course hath prevailed from the oldest times. It hath been so general and so uniform, that it must be considered as the law of the land. It has prevailed, so far as we can discover, not only in all the courts which now exist, whether of law or equity, but in those which have been suppressed or disused, such as the Court

* See the Appendix, No. I.

of Wards and the Star Chamber. An author quoted by Rushworth, speaking of the constitution of that chamber, says, — "And so it was resolved *by the Judges, on reference made to them; and their opinion, after deliberate hearing, and view of former precedents, was published in open court.*" * It appears elsewhere in the same compiler that all their proceedings were public, even in deliberating previous to judgment.

The Judges in their reasonings have always been used to observe on the arguments employed by the counsel on either side, and on the authorities cited by them, — assigning the grounds for rejecting the authorities which they reject, or for adopting those to which they adhere, or for a different construction of law, according to the occasion. This publicity, not only of decision, but of deliberation, is not confined to their several courts, whether of law or equity, whether above or at Nisi Prius; but it prevails where they are assembled, in the Exchequer Chamber, or at Serjeants' Inn, or wherever matters come before the Judges collectively for consultation and revision. It seems to your Committee to be moulded in the essential frame and constitution of British judicature. Your Committee conceives that the English jurisprudence has not any other sure foundation, nor, consequently, the lives and properties of the subject any sure hold, but in the maxims, rules, and principles, and juridical traditionary line of decisions contained in the notes taken, and from time to time published, (mostly under the sanction of the Judges,) called Reports.

In the early periods of the law it appears to your Committee that a course still better had been pur-

* Rushworth, Vol. II. p. 475, et passim.

sued, but grounded on the same principles; and that no other cause than the multiplicity of business prevented its continuance. "Of ancient time," says Lord Coke, "in cases of difficulties, either criminal or civil, *the reasons and causes* of the judgment were set down *upon the record*, and so continued in the reigns of Ed. I. and Ed. II., and then there was no need of reports; but in the reign of Ed. III. (when the law was in its height) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the record, but then *the great casuists and reporters of cases* (certain grave and sad men) published the cases, *and the reasons and causes of the judgments or resolutions*, which, from the beginning of the reign of Ed. III. and since, we have in print. But these also, though of great credit and excellent use in their kind, *yet far underneath the authority of the Parliament Rolls, reporting the acts, judgments, and resolutions of that highest court.*"*

Reports, though of a kind less authentic than the Year Books, to which Coke alludes, have continued without interruption to the time in which we live. It is well known that the elementary treatises of law, and the dogmatical treatises of English jurisprudence, whether they appear under the names of institutes, digests, or commentaries, do not rest on the authority of the supreme power, like the books called the Institute, Digest, Code, and authentic collations in the Roman law. With us doctrinal books of that description have little or no authority, other than as they are supported by the adjudged cases and reasons given at one time or other from the bench; and to these they constantly refer. This appears in Coke's Institutes,

* Coke, 4 Inst. p. 5.

in Comyns's Digest, and in all books of that nature. To give judgment privately is to put an end to reports; and to put an end to reports is to put an end to the law of England. It was fortunate for the Constitution of this kingdom, that, in the judicial proceedings in the case of ship-money, the Judges did not then venture to depart from the ancient course. They gave and they argued their judgment in open court.* Their reasons were publicly given, and the reasons assigned for their judgment took away all its authority. The great historian, Lord Clarendon, at that period a young lawyer, has told us that the Judges gave as law from the bench what every man in the hall knew not to be law.

This publicity, and this mode of attending the decision with its grounds, is observed not only in the tribunals where the Judges preside in a judicial capacity, individually or collectively, but where they are consulted by the Peers on the law in all *writs of error* brought from below. In the opinion they give of the matter assigned as error, one at least of the Judges argues the questions at large. He argues them publicly, though in the Chamber of Parliament,—and in such a manner, that every professor, practitioner, or student of the law, as well as the parties to the suit, may learn the opinions of all the Judges of all the courts upon those points in which the Judges in one court might be mistaken.

Your Committee is of opinion that nothing better could be devised by human wisdom than argued judgments publicly delivered for preserving unbroken the great traditionary body of the law, and for mark-

* This is confined to the judicial opinions in Hampden's case. It does not take in all the extra-judicial opinions.

ing, whilst that great body remained unaltered, every variation in the application and the construction of particular parts, for pointing out the ground of each variation, and for enabling the learned of the bar and all intelligent laymen to distinguish those changes made for the advancement of a more solid, equitable, and substantial justice, according to the variable nature of human affairs, a progressive experience, and the improvement of moral philosophy, from those hazardous changes in any of the ancient opinions and decisions which may arise from ignorance, from levity, from false refinement, from a spirit of innovation, or from other motives, of a nature not more justifiable.

Your Committee, finding this course of proceeding to be concordant with the character and spirit of our judicial proceeding, continued from time immemorial, supported by arguments of sound theory, and confirmed by effects highly beneficial, could not see without uneasiness, in this great trial for Indian offences, a marked innovation. Against their reiterated requests, remonstrances, and protestations, the opinions of the Judges were always taken secretly. Not only the constitutional publicity for which we contend was refused to the request and entreaty of your Committee, but when a noble peer, on the 24th day of June, 1789, did in open court declare that he would then propose some questions to the Judges in that place, and hoped to receive their answer openly, according to the approved good customs of that and of other courts, the Lords instantly put a stop to the further proceeding by an immediate adjournment to the Chamber of Parliament. Upon this adjournment, we find by the Lords' Journals, that the House, on being resumed, ordered, that "it should resolve itself into

a Committee of the whole House, on Monday next, to take into consideration what is the proper manner of putting questions by the Lords to the Judges, and of their answering the same, in judicial proceedings." The House did thereon resolve itself into a committee, from which the Earl of Galloway, on the 29th of the same month, reported as follows: —"That the House has, in the trial of Warren Hastings, Esquire, proceeded in a regular course, in the manner of propounding their questions to the Judges in the Chamber of Parliament, and in receiving their answers to them in the same place." The resolution was agreed to by the Lords; but the protest as below * was entered thereupon, and supported by strong arguments.

Your Committee remark, that this resolution states only, that the House had proceeded, in this secret manner of propounding questions to the Judges and of receiving their answers, during the trial, and on matters of debate between the parties, "in a regular

* "*Dissentient.*

"1st. Because, by consulting the Judges out of court, in the absence of the parties, and with shut doors, we have deviated from the most approved and almost uninterrupted practice of above a century and a half, and established a precedent not only destructive of the justice due to the parties at our bar, but materially injurious to the rights of the community at large, who in cases of impeachments are more peculiarly interested that all proceedings of this High Court of Parliament should be open and exposed, like all other courts of justice, to public observation and comment, in order that no covert and private practices should defeat the great ends of public justice.

"2dly. Because, from private opinions of the Judges, upon private statements, which the parties have neither heard nor seen, grounds of a decision will be obtained which must inevitably affect the cause at issue at our bar; this mode of proceeding seems to be a violation of the first principle of justice, inasmuch as we thereby force and confine the opinions of the Judges to our private statement; and through

course." It does not assert that another course would not have been *as* regular. It does not state either judicial convenience, principle, or body of precedents for that *regular course.* No such body of precedents appear on the Journal, that we could discover. Seven-and-twenty, at least, in a regular series, are directly contrary to this regular course. Since the era of the 29th of June, 1789, no one question has been admitted to go publicly to the Judges.

This determined and systematic privacy was the more alarming to your Committee, because the questions did not (except in that case) originate from the Lords for the direction of their own conscience. These questions, in some material instances, were not made or allowed by the parties at the bar, nor settled in open court, but differed materially from what your Managers contended was the true state of the question, as put and argued by them. They were such as the Lords thought proper to state for them. Strong remonstrances produced some alteration in this par-

the medium of our subsequent decision we transfer the effect of those opinions to the parties, who have been deprived of the right and advantage of being heard by such private, though unintended, transmutation of the point at issue.

"3dly. Because the prisoners who may hereafter have the misfortune to stand at our bar will be deprived of that consolation which the Lord High Steward Nottingham conveyed to the prisoner, Lord Cornwallis, viz., 'That the Lords have that tender regard of a prisoner at the bar, that they will not suffer a case to be put in his absence, lest it should prejudice him by being wrong stated.'

"4thly. Because unusual mystery and secrecy in our judicial proceedings must tend either to discredit the acquittal of the prisoner, or render the justice of his condemnation doubtful.

"PORCHESTER.
SUFFOLK AND BERKSHIRE.
LOUGHBOROUGH."

ticular; but even after these remonstrances, several questions were made on statements which the Managers never made nor admitted.

Your Committee does not know of any precedent before this, in which the Peers, on a proposal of the Commons, or of a less weighty person before their court, to have the cases publicly referred to the Judges, and their arguments and resolutions delivered in their presence, absolutely refused. The very few precedents of such private reference on trials have been made, as we have observed already, *sub silentio*, and without any observation from the parties. In the precedents we produce, the determination is accompanied with its reasons, and the publicity is considered as the clear, undoubted right of the parties.

Your Committee, using their best diligence, have never been able to form a clear opinion upon the ground and principle of these decisions. The mere result, upon each case decided by the Lords, furnished them with no light, from any principle, precedent, or foregone authority of law or reason, to guide them with regard to the next matter of evidence which they had to offer, or to discriminate what matter ought to be urged or to be set aside: your Committee not being able to divine whether the particular evidence, which, upon a conjectural principle, they might choose to abandon, would not appear to this House, and to the judging world at large, to be admissible, and possibly decisive proof. In these straits, they had and have no choice, but either wholly to abandon the prosecution, and of consequence to betray the trust reposed in them by this House, or to bring forward such matter of evidence as they are furnished with from sure sources of authenticity, and

which in their judgment, aided by the best advice they could obtain, is possessed of a moral aptitude juridically to prove or to illustrate the case which the House had given them in charge.

MODE OF PUTTING THE QUESTIONS.

WHEN your Committee came to examine into those private opinions of the Judges, they found, to their no small concern, that the mode both of putting the questions to the Judges, and their answers, was still more unusual and unprecedented than the privacy with which those questions were given and resolved.

This mode strikes, as we apprehend, at the vital privileges of the House. For, with the single exception of the first question put to the Judges in 1788, the case being stated, the questions are raised directly, specifically, and by name, on those privileges: that is, *What evidence is it competent for the Managers of the House of Commons to produce?* We conceive that it was not proper, *nor justified by a single precedent*, to refer to the Judges of the inferior courts any question, and still less for them to decide in their answer, of what is or is not competent for the House of Commons, or for any committee acting under their authority, to do or not to do, in any instance or respect whatsoever. This new and unheard-of course can have no other effect than to subject to the discretion of the Judges the Law of Parliament and the privileges of the House of Commons, and in a great measure the judicial privileges of the Peers themselves: any intermeddling in which on their part we conceive to be a dangerous and unwarrantable assumption of power. It is contrary to what has been

declared by Lord Coke himself, in a passage before quoted, to be the duty of the Judges, — and to what the Judges of former times have confessed to be their duty, on occasions to which he refers in the time of Henry VI. And we are of opinion that the conduct of those sages of the law, and others their successors, who have been thus diffident and cautious in giving their opinions upon matters concerning Parliament, and particularly on the privileges of the House of Commons, was laudable in the example, and ought to be followed: particularly the principles upon which the Judges declined to give their opinions in the year 1614. It appears by the Journals of the Lords, that a question concerning the law relative to impositions having been put to the Judges, the proceeding was as follows. "Whether the Lords the Judges shall be heard deliver their opinion touching the point of impositions, before further consideration be had of answer to be returned to the lower House concerning the message from them lately received. Whereupon the number of the Lords requiring to hear the Judges' opinions by saying '*Content*' exceeding the others which said '*Non Content*,' the Lords the Judges, so desiring, were permitted to withdraw themselves into the Lord Chancellor's private rooms, where having remained awhile and advised together, they returned into the House, and, having taken their places, and standing discovered, did, by the mouth of the Lord Chief-Justice of the King's Bench, humbly desire to be forborne at this time, in this place, to deliver any opinion in this case, for many weighty and important reasons, which his Lordship delivered with great gravity and eloquence; concluding that himself and his brethren are upon particulars in ju-

dicial course to speak and judge between the King's Majesty and his people, and likewise between his Highness's subjects, and in no case to be disputants on any side."

Your Committee do not find anything which, through inadvertence or design, had a tendency to subject the law and course of Parliament to the opinions of the Judges of the inferior courts, from that period until the 1st of James II. The trial of Lord Delamere for high treason was had by special commission before the Lord High Steward: it was before the act which directs that *all* peers should be summoned to such trials. This was not a trial in full Parliament, in which case it was then contended for that the Lord High Steward was the judge of the law, presiding in the Court, but had no vote in the verdict, and that the Lords were triers only, and had no vote in the judgment of law. This was looked on as the course, where the trial was not in full Parliament, in which latter case there was no doubt but that the Lord High Steward made a part of the body of the triers, and that the whole House was the judge.* In this cause, after the evidence for the Crown had been closed, the prisoner prayed the Court to adjourn. The Lord High Steward doubted his power to take that step in that stage of the trial; and the question was, "Whether, the trial not being in full Parliament, when the prisoner is upon his trial, and evidence for the King is given, the Lords being (as it may be termed) charged with the prisoner, the Peers may separate for a time, which is the consequence of an adjournment?" The Lord High Steward doubted of his power to adjourn the Court. The

* See the Lord High Steward's speech on that head, 1st James II.

case was evidently new, and his Grace proposed to have the opinion of the Judges upon it. The Judges in consequence offering to withdraw into the Exchequer Chamber, Lord Falconberg "insisted that the question concerned the privilege of the Peerage only, and conceived that *the Judges are not concerned to make any determination in that matter; and being such a point of privilege, certainly the inferior courts have no right to determine it.*" It was insisted, therefore, that the Lords triers should retire with the Judges. The Lord High Steward thought differently, and opposed this motion; but finding the other opinion generally prevalent, he gave way, and the Lords triers retired, taking the Judges to their consult. When the Judges returned, they delivered their opinion in *open court.* Lord Chief-Justice Herbert spoke for himself and the rest of the Judges. After observing on the novelty of the case, with a temperate and becoming reserve with regard to the rights of Parliaments, he marked out the limits of the office of the inferior Judges on such occasions, and declared, — "*All that we, the Judges, can do is to acquaint your Grace and the noble Lords what the law is in the inferior courts in cases of the like nature,* and the reason of the law in those points, and *then leave the jurisdiction of the court to its proper judgment.*" The Chief-Justice concluded his statement of the usage below, and his observations on the difference of the cases of a peer tried in full Parliament and by a special commission, in this manner: — "Upon the whole matter, my Lords, whether the Peers being judges in the one and not in the other instance alters the case, or whether the reason of the law in inferior courts why the jury are not permitted to separate

until they have discharged themselves of their verdict may have any influence on this case, *where that reason seems to fail*, the prisoner being to be tried by men of unquestionable honor, *we cannot presume so far as to make any determination, in a case which is both new to us and of great consequence in itself;* but think it the proper way for *us*, having laid matters as we conceive them before your Grace and my Lords, *to submit the jurisdiction of your own court to your own determination.*"

It appears to your Committee, that the Lords, who stood against submitting the course of their high court to the inferior Judges, and that the Judges, who, with a legal and constitutional discretion, declined giving any opinion in this matter, acted as became them; and your Committee sees no reason why the Peers at this day should be less attentive to the rights of their court with regard to an exclusive judgment on their own proceedings or to the rights of the Commons acting as accusers for the whole commons of Great Britain in that court, or why the Judges should be less reserved in deciding upon any of these points of high Parliamentary privilege, than the Judges of that and the preceding periods. This present case is a proceeding in full Parliament, and not like the case under the commission in the time of James II., and still more evidently out of the province of Judges in the inferior courts.

All the precedents previous to the trial of Warren Hastings, Esquire, seem to your Committee to be uniform. The Judges had constantly refused to give an opinion on any of the powers, privileges, or competencies of either House. But in the present instance your Committee has found, with great con-

cern, a further matter of innovation. Hitherto the constant practice has been to put questions to the Judges but in the three following ways: as, 1st, A question of pure abstract law, without reference to any case, or merely upon an A. B. case stated to them; 2dly, To the legal construction of some act of Parliament; 3dly, To report the course of proceeding in the courts below upon an abstract case. Besides these three, your Committee knows not of a single example of any sort, during the course of any judicial proceeding at the bar of the House of Lords, whether the prosecution has been by indictment, by information from the Attorney-General, or by impeachment of the House of Commons.

In the present trial, the Judges appear to your Committee not to have given their judgment on points of law, stated as such, but to have in effect tried the cause, in the whole course of it, — with one instance to the contrary.

The Lords have stated no question of general law, no question on the construction of an act of Parliament, no question concerning the practice of the courts below. *They put the whole gross case and matter in question, with all its circumstances, to the Judges.* They have, *for the first time*, demanded of them what particular person, paper, or document ought or ought not to be produced before them by the Managers for the Commons of Great Britain: for instance, whether, under such an article, the Bengal Consultations of such a day, the examination of Rajah Nundcomar, and the like. The operation of this method is in substance not only to make the Judges masters of the whole process and conduct of the trial, but through that medium to transfer to

them the ultimate judgment on the cause itself and its merits.

The Judges attendant on the Court of Peers hitherto have not been supposed to know the particulars and minute circumstances of the cause, and must therefore be incompetent to determine upon those circumstances. The evidence taken is not, of course, that we can find, delivered to them; nor do we find that in fact any order has been made for that purpose, even supposing that the evidence could at all regularly be put before them. They are present in court, not to hear the trial, but solely to advise in matter of law; they cannot take upon themselves to say anything about the Bengal Consultations, or to know anything of Rajah Nundcomar, of Kelleram, or of Mr. Francis, or Sir John Clavering.

That the House may be the more fully enabled to judge of the nature and tendency of thus putting the question *specifically, and on the gross case*, your Committee thinks fit here to insert one of those questions, reserving a discussion of its particular merits to another place. It was stated on the 22d of April, 1790, "On that day the Managers proposed to show that Kelleram fell into great balances with the East India Company, in consequence of his appointment." It is so stated in the printed Minutes (p. 1206). But the real tendency and gist of the proposition is not shown. However, the question was put, "Whether it be or be not competent *to the Managers for the Commons to give evidence upon the charge in the sixth article, to prove* that the rent [at ?] which the defendant, Warren Hastings, Esquire, let the lands mentioned in the said sixth article of charge to Kelleram fell into arrear and was deficient; and whether, if proof were offered

that the rent fell into arrear immediately after the letting, the evidence in that case would be competent?" The Judges answered, on the 27th of the said month, as follows: — "*It is not competent for the Managers for the House of Commons* to give evidence upon the charge in the sixth article, to prove that the rent at which the defendant, Warren Hastings, let the lands [mentioned?] in the said sixth article of charge to Kellerам fell into arrear and was deficient."

The House will observe that on the question two cases of competence were put: the first, on the competence of Managers for the House of Commons to give the evidence supposed to be offered by them, but which we deny to have been offered in the manner and for the purpose assumed in this question; the second is in a shape apparently more abstracted, and more nearly approaching to Parliamentary regularity, — on the competence of the evidence itself, in the case of a supposed circumstance being superadded. The Judges answered only the first, denying flatly the competence of the Managers. As to the second, the competence of the supposed evidence, they are profoundly silent. Having given this blow to our competence, about the other question, (which was more within their province,) namely, the competence of evidence on a case hypothetically stated, they give themselves no trouble. The Lords on that occasion rejected the whole evidence. On the face of the Judges' opinion it is a determination *on a case*, the trial of which was not with them, but it contains *no rule or principle of law*, to which alone it was their duty to speak.*

* All the resolutions of the Judges, to the time of the reference to the Committee, are in the Appendix, No. 2.

These essential innovations tend, as your Committee conceives, to make an entire alteration in the constitution and in the purposes of the High Court of Parliament, and even to reverse the ancient relations between the Lords and the Judges. They tend wholly to take away from the Commons the benefit of making good their case before the proper judges, and submit this high inquest to the inferior courts.

Your Committee sees no reason why, on the same principles and precedents, the Lords may not terminate their proceedings in this, and in all future trials, by sending the whole body of evidence taken before them, in the shape of a special verdict, to the Judges, and may not demand of them, whether they ought, on the whole matter, to acquit or condemn the prisoner; nor can we discover any cause that should hinder them [the Judges] from deciding on the accumulative body of the evidence as hitherto they have done in its parts, and from dictating the existence or non-existence of a misdemeanor or other crime in the prisoner as they think fit, without any more reference to principle or precedent of law than hitherto they have thought proper to apply in determining on the several parcels of this cause.

Your Committee apprehends that very serious inconveniencies and mischiefs may hereafter arise from a practice in the House of Lords of considering itself as unable to act without the judges of the inferior courts, of implicitly following their dictates, of adhering with a literal precision to the very words of their responses, and putting them to decide on the competence of the Managers for the Commons, the competence of the evidence to be produced, who are to be permitted to appear, what questions are to be

asked of witnesses, and indeed, parcel by parcel, on the whole of the gross case before them, — as well as to determine upon the order, method, and process of every part of their proceedings. The judges of the inferior courts are by law rendered independent of the Crown. But this, instead of a benefit to the subject, would be a grievance, if no way was left of producing a responsibility. If the Lords cannot or will not act without the Judges, and if (which God forbid!) the Commons should find it at any time hereafter necessary to impeach them before the Lords, this House would find the Lords disabled in their functions, fearful of giving any judgment on matter of law or admitting any proof of fact without them [the Judges]; and having once assumed the rule of proceeding and practice below as their rule, they must at every instant resort, for their means of judging, to the authority of those whom they are appointed to judge.

Your Committee must always act with regard to men as they are. There are no privileges or exemptions from the infirmities of our common nature. We are sensible that all men, and without any evil intentions, will naturally wish to extend their own jurisdiction, and to weaken all the power by which they may be limited and controlled. It is the business of the House of Commons to counteract this tendency. This House had given to its Managers no power to abandon its privileges and the rights of its constituents. They were themselves as little disposed as authorized to make this surrender. They are members of this House, not only charged with the management of this impeachment, but partaking of a general trust inseparable from the Commons of Great Britain

in Parliament assembled, one of whose principal functions and duties it is to be observant of the courts of justice, and to take due care that none of them, from the lowest to the highest, shall pursue new courses, unknown to the laws and constitution of this kingdom, or to equity, sound legal policy, or substantial justice. Your Committee were not sent into Westminster Hall for the purpose of contributing in their persons, and under the authority of the House, to change the course or law of Parliament, which had continued unquestioned for at least four hundred years. Neither was it any part of their mission to suffer precedents to be established, with relation to the law and rule of evidence, which tended in their opinion to shut up forever all the avenues to justice. They were not to consider a rule of evidence as a means of concealment. They were not, without a struggle, to suffer any subtleties to prevail which would render a process in Parliament, not the terror, but the protection, of all the fraud and violence arising from the abuse of British power in the East. Accordingly, your Managers contended with all their might, as their predecessors in the same place had contended with more ability and learning, but not with more zeal and more firmness, against those dangerous innovations, as they were successively introduced: they held themselves bound constantly to protest, and in one or two instances they did protest, in discourses of considerable length, against those private, and, for what they could find, unargued judicial opinions, which must, as they fear, introduce by degrees the miserable servitude which exists where the law is uncertain or unknown.

DEBATES ON EVIDENCE.

THE chief debates at the bar, and the decisions of the Judges, (which we find in all cases implicitly adopted, in all their extent and without qualification, by the Lords,) turned upon *evidence*. Your Committee, before the trial began, were apprised, by discourses which prudence did not permit them to neglect, that endeavors would be used to embarrass them in their proceedings by exceptions against evidence; that the judgments and opinions of the courts below would be resorted to on this subject; that there the rules of evidence were precise, rigorous, and inflexible; and that the counsel for the criminal would endeavor to introduce the same rules, with the same severity and exactness, into this trial. Your Committee were fully assured, and were resolved strenuously to contend, that no doctrine or rule of law, much less the practice of any court, ought to have weight or authority in Parliament, further than as such doctrine, rule, or practice is agreeable to the proceedings in Parliament, or hath received the sanction of approved precedent there, or is founded on the immutable principles of substantial justice, without which, your Committee readily agrees, no practice in any court, high or low, is proper or fit to be maintained.

In this preference of the rules observed in the High Court of Parliament, preëminently superior to all the rest, there is no claim made which the inferior courts do not make, each with regard to itself. It is well known that the rules of proceedings in these courts vary, and some of them very essentially; yet the usage of each court is the law of the court, and it

would be vain to object to any rule in any court, that it is not the rule of another court. For instance: as a general rule, the Court of King's Bench, on trials by jury, cannot receive depositions, but must judge by testimony *vivâ voce*. The rule of the Court of Chancery is not only not the same, but it is the reverse, and Lord Hardwicke ruled accordingly. "The constant and established proceedings of this Court," said this great magistrate, "are on written evidence, like the proceedings on the Civil and Canon Law. This is the course of the Court, and the course of the Court is the law of the Court." *

Your Managers were convinced that one of the principal reasons for which this cause was brought into Parliament was the danger that in inferior courts their rule would be formed naturally upon their ordinary experience, and the exigencies of the cases which in ordinary course came before them. This experience, and the exigencies of these cases, extend little further than the concerns of a people comparatively in a narrow vicinage, a people of the same or nearly the same language, religion, manners, laws, and habits: with them an intercourse of every kind was easy.

These rules of law in most cases, and the practice of the courts in all, could not be easily applicable to a people separated from Great Britain by a very great part of the globe, — separated by manners, by principles of religion, and of inveterate habits as strong as nature itself, still more than by the circumstance of local distance. Such confined and inapplicable rules would be convenient, indeed, to oppression, to extortion, bribery, and corruption, but ruinous to the peo-

* Atkyns, Vol. I. p. 445.

ple, whose protection is the true object of all tribunals and of all their rules. Even English judges in India, who have been sufficiently tenacious of what they considered as the rules of English courts, were obliged in many points, and particularly with regard to evidence, to relax very considerably, as the civil and politic government has been obliged to do in several other cases, on account of insuperable difficulties arising from a great diversity of manners, and from what may be considered as a diversity even in the very constitution of their minds, — instances of which your Committee will subjoin in a future Appendix.

Another great cause why your Committee conceived this House had chosen to proceed in the High Court of Parliament was because the inferior courts were habituated, with very few exceptions, to try men for the abuse only of their individual and natural powers, which can extend but a little way.* Before them, offences, whether of fraud or violence or both, are, for much the greater part, charged upon persons of mean and obscure condition. Those unhappy persons are so far from being supported by men of rank and influence, that the whole weight and force of the community is directed against them. In this case, they are in general objects of protection as well as of punishment; and the course perhaps ought, as it is *commonly* said to be, not to suffer anything to be applied to their conviction beyond what the strictest rules will permit. But in the cause which your Managers have in charge the circumstances are the very reverse to what happens in the cases of mere personal delinquency which come before the [inferior] courts-

* Blackstone's Commentaries, Book IV. p. 258.

Sir William Blackstone

From a painting by Sir Joshua Reynolds, P.R.A., in the National Portrait Gallery

These courts have not before them persons who act, and who justify their acts, by the nature of a despotical and arbitrary power. The abuses stated in our impeachment are not those of mere individual, natural faculties, but the abuses of civil and political authority. The offence is that of one who has carried with him, in the perpetration of his crimes, whether of violence or of fraud, the whole force of the state, — who, in the perpetration and concealment of offences, has had the advantage of all the means and powers given to government for the detection and punishment of guilt and for the protection of the people. The people themselves, on whose behalf the Commons of Great Britain take up this remedial and protecting prosecution, are naturally timid. Their spirits are broken by the arbitrary power usurped over them, and claimed by the delinquent as his law. They are ready to flatter the power which they dread. They are apt to look for favor [from their governors] by covering those vices in the predecessor which they fear the successor may be disposed to imitate. They have reason to consider complaints as means, not of redress, but of aggravation to their sufferings; and when they shall ultimately hear that the nature of the British laws and the rules of its tribunals are such as by no care or study either they, or even the Commons of Great Britain, who take up their cause, can comprehend, but which in effect and operation leave them unprotected, and render those who oppress them secure in their spoils, they must think still worse of British justice than of the arbitrary power of the Company's servants which hath been exercised to their destruction. They will be forever, what for the greater part they have hith-

erto been, inclined to compromise with the corruption of the magistrates, as a screen against that violence from which the laws afford them no redress.

For these reasons your Committee did and do strongly contend that the Court of Parliament ought to be open with great facility to the production of all evidence, except that which the precedents of Parliament teach them authoritatively to reject, or which hath no sort of natural aptitude directly or circumstantially to prove the case. They have been and are invariably of opinion that the Lords ought *to enlarge, and not to contract, the rules of evidence, according to the nature and difficulties of the case*, for redress to the injured, for the punishment of oppression, for the detection of fraud, — and above all, to prevent, what is the greatest dishonor to all laws and to all tribunals, the failure of justice. To prevent the last of these evils all courts in this and all countries have constantly made all their maxims and principles concerning testimony to conform; although such courts have been bound undoubtedly by stricter rules, both of form and of prescript cases, than the sovereign jurisdiction exercised by the Lords on the impeachment of the Commons ever has been or ever ought to be. Therefore your Committee doth totally reject any rules by which the practice of any inferior court is affirmed as a directory guide to an higher, especially where the forms and the powers of the judicature are different, and the objects of judicial inquiry are not the same.

Your Committee conceives that the trial of a cause is not in the arguments or disputations of the prosecutors and the counsel, but in *the evidence*, and that to refuse evidence is to refuse to hear the cause:

nothing, therefore, but the most clear and weighty reasons ought to preclude its production. Your Committee conceives, that, when evidence on the face of it relevant, that is, connected with the party and the charge, was denied to be competent, *the burden lay upon those who opposed it* to set forth the authorities, whether of positive statute, known recognized maxims and principles of law, passages in an accredited institute, code, digest, or systematic treatise of laws, or some adjudged cases, wherein the courts have rejected evidence of that nature. No such thing ever (except in one instance, to which we shall hereafter speak) was produced at the bar, nor (that we know of) produced by the Lords in their debates, or by the Judges in the opinions by them delivered. Therefore, for anything which as yet appears to your Committee to the contrary, these responses and decisions were, in many of the points, not the determinations of any law whatsoever, but mere arbitrary decrees, to which we could not without solemn protestation submit.

Your Committee, at an early period, and frequently since the commencement of this trial, have neglected no means of research which might afford them information concerning these supposed strict and inflexible rules of proceeding and of evidence, which appeared to them destructive of all the means and ends of justice: and, first, they examined carefully the Rolls and Journals of the House of Lords, as also the printed trials of cases before that court.

Your Committee finds but one instance, in the whole course of Parliamentary impeachments, in which evidence offered by the Commons has been rejected on the plea of inadmissibility or incompe-

tence. This was in the case of Lord Strafford's trial; when the copy of a warrant (the same not having any attestation to authenticate it as a true copy) was, on deliberation, not admitted, — and your Committee thinks, as the case stood, with reason. But even in this one instance the Lords seemed to show a marked anxiety not to narrow too much the admissibility of evidence; for they confined their determination "to this individual case," as the Lord Steward reported their resolution; and he adds, — "They conceive this could be no impediment or failure in the proceeding, because the truth and verity of it would depend on the first general power given to execute it, which they who manage the evidence for the Commons say they could prove."* Neither have objections to evidence offered by the prisoner been very frequently made, nor often allowed when made. In the same case of Lord Strafford, two books produced by his Lordship, without proof by whom they were written, were rejected, (and on a clear principle,) "as being private books, and no records."† On both these occasions, the questions were determined by the Lords alone, without any resort to the opinions of the Judges. In the impeachments of Lord Stafford, Dr. Sacheverell, and Lord Wintoun, no objection to evidence appears in the Lords' Journals to have been pressed, and not above one taken, which was on the part of the Managers.

Several objections were, indeed, taken to evidence in Lord Macclesfield's trial.‡ They were made on the

* Lords' Journals, Vol. IV. p. 204. An. 1641. Rush. Trial of Lord Strafford, p. 430.

† Lords' Journals, Vol. IV. p. 210.

‡ Id. Vol. XXII. p. 536 to 546. An. 1725.

part of the Managers, except in two instances, where the objections were made by the witnesses themselves. They were all determined (those started by the Managers in their favor) by the Lords themselves, without any reference to the Judges. In the discussion of one of them, a question was stated for the Judges concerning the law in a similar case upon an information in the court below; but it was set aside by the previous question.*

On the impeachment of Lord Lovat, no more than one objection to evidence was taken by the Managers, against which Lord Lovat's counsel were not permitted to argue. Three objections on the part of the prisoner were made to the evidence offered by the Managers, but all without success.† The instances of similar objections in Parliamentary trials of peers on indictments are too few and too unimportant to require being particularized; — one, that in the case of Lord Warwick, has been already stated.

The principles of these precedents do not in the least affect any case of evidence which your Managers had to support. The paucity and inapplicability of instances of this kind convince your Committee that the Lords have ever used some latitude and liberality in all the means of bringing information before them: nor is it easy to conceive, that, as the Lords are, and of right ought to be, judges of law and fact, many cases should occur (except those where a personal *vivâ voce* witness is denied to be competent) in which a judge, possessing an entire judicial capacity, can determine by anticipation what is good evidence, and what not, before he has heard it. When he has heard

* Lords' Journals, Vol. XXII. p. 541.

† Id. Vol. XXVII. p. 63, 65. An. 1746.

it, of course he will judge what weight it is to have upon his mind, or whether it ought not entirely to be struck out of the proceedings.

Your Committee, always protesting, as before, against the admission of any law, foreign or domestic, as of authority in Parliament, further than as written reason and the opinion of wise and informed men, has examined into the writers on the Civil Law, ancient and more recent, in order to discover what those rules of evidence, in any sort applicable to criminal cases, were, which were supposed to stand in the way of the trial of offences committed in India.

They find that the term Evidence, *Evidentia*, from whence ours is taken, has a sense different in the Roman law from what it is understood to bear in the English jurisprudence; the term most nearly answering to it in the Roman being *Probatio*, Proof, which, like the term *Evidence*, is a generic term, including everything by which a doubtful matter may be rendered more certain to the judge: or, as Gilbert expresses it, every matter is evidence which amounts to the proof of the point in question.*

On the general head of Evidence, or Proof, your Committee finds that much has been written by persons learned in the Roman law, particularly in modern times, — and that many attempts have been made to reduce to rules the principles of evidence or proof, a matter which by its very nature seems incapable of that simplicity, precision, and generality which are necessary to supply the matter or to give the form to a rule of law. Much learning has been employed on the doctrine of indications and presumptions in their books, — far more than is to be found in our

* Gilbert's Law of Evidence, p. 23.

law. Very subtle disquisitions were made on all matters of jurisprudence in the times of the classical Civil Law, by the followers of the Stoic school.* In the modern school of the same law, the same course was taken by Bartolus, Baldus, and the Civilians who followed them, before the complete revival of literature.† All the discussions to be found in those voluminous writings furnish undoubtedly an useful exercise to the mind, by methodizing the various forms in which one set of facts or collection of facts, or the qualities or demeanor of persons, reciprocally influence each other; and by this course of juridical discipline they add to the readiness and sagacity of those who are called to plead or to judge. But as human affairs and human actions are not of a metaphysical nature, but the subject is concrete, complex, and moral, they cannot be subjected (without exceptions which reduce it almost to nothing) to any certain rule. Their rules with regard to competence were many and strict, and our lawyers have mentioned it to their reproach. "The Civilians," it has been observed, "differ in nothing more than admitting evidence; for they reject *histriones*, &c., and whole tribes of people."‡ But this extreme rigor as to competency, rejected by our law, is not found to extend to the *genus* of evidence, but only to a particular *species*, — personal witnesses. Indeed, after all their efforts to fix these things by positive and inflexible maxims, the best Roman lawyers, in their best ages, were obliged to confess that every case of evidence rather formed its own rule than that any rule could be adapted to every case. The best opin-

* Gravina, 84, 85. † Id. 90 usque ad 100.

‡ Atkyns, Rep. Vol. I. p. 37, Omichund *versus* Barker.

ions, however, seem to have reduced the admissibility of witnesses to a few heads. "For if," said Callistratus, in a passage preserved to us in the Digest, "the testimony is free from suspicion, either on account of the quality of the *person*, namely, that he is in a reputable situation, or for *cause*, that is to say, that the testimony given is not for reward nor favor nor for enmity, such a witness is admissible." This first description goes to *competence*, between which and *credit* Lord Hardwicke justly says the discrimination is very nice. The other part of the text shows their anxiety to reduce credibility itself to a fixed rule. It proceeds, therefore, — "His Sacred Majesty, Hadrian, issued a rescript to Vivius Varus, Lieutenant of Cilicia, to this effect, that he who sits in judgment is the most capable of determining what credit is to be given to witnesses." The words of the letter of rescript are as follow: — "You ought best to know what credit is to be given to witnesses, — who, and of what dignity, and of what estimation they are, — whether they seem to deliver their evidence with simplicity and candor, whether they seem to bring a formed and premeditated discourse, or whether on the spot they give probable matter in answer to the questions that are put to them." And there remains a rescript of the same prince to Valerius Verus, on the bringing out the credit of witnesses. This appears to go more to the *general* principles of evidence. It is in these words: — "What evidence, and in what measure or degree, shall amount to proof in each case can be defined in no manner whatsoever that is sufficiently certain. For, though not always, yet frequently, the truth of the affair may appear without any matter of public record. In some cases the number of the wit

nesses, in others their dignity and authority, is to be weighed; in others, concurring public fame tends to confirm the credit of the evidence in question. This alone I am able, and in a few words, to give you as my determination: that you ought not too readily to bind yourself to try the cause upon any one description of evidence; but you are to estimate by your own discretion what you ought to credit, or what appears to you not to be established by proof sufficient." *

The modern writers on the Civil Law have likewise much matter on this subject, and have introduced a strictness with regard to personal testimony which our particular jurisprudence has not thought it at all proper to adopt. In others we have copied them more closely. They divide Evidence into two parts, in which they do not differ from the ancients: 1st, What is Evidence, or Proof, by itself; 2dly, What is Presumption, "which is a probable conjecture, from a reference to something which, coming from marks and tokens ascertained, shall be taken for truth, until some other shall be adduced." Again, they have labored particularly to fix rules for presumptions, which they divide into, 1. Violent and necessary, 2. Probable, 3. and lastly, Slight and rash.† But finding that this head of Presumptive Evidence (which makes so large a part with them and with us in the trial of all causes, and particularly criminal causes) is extremely difficult to ascertain, either with regard to what shall be considered as exclusively creating any of these three degrees of presumption, or what facts, and how proved, and what marks and tokens, may serve to establish them, even those Civilians whose

* Digest. Lib. XXII. Tit. 5. † Calvinus, voce *Præsumptio.*

character it is to be subtle to a fault have been obliged to abandon the task, and have fairly confessed that the labors of writers to fix rules for these matters have been vain and fruitless. One of the most able of them* has said, "that the doctors of the law have written nothing of value concerning presumptions; nor is the subject-matter such as to be reduced within the prescribed limit of any certain rules. In truth, it is from the actual existing case, and from the circumstances of the persons and of the business, that we ought (under the guidance of an incorrupt judgment of the mind, which is called an equitable discretion) to determine what presumptions or conjectural proofs are to be admitted as rational or rejected as false, or on which the understanding can pronounce nothing, either the one way or the other."

It is certain, that, whatever over-strictness is to be found in the older writers on this law with regard to evidence, it chiefly related to the mere competency of witnesses; yet even here the rigor of the Roman lawyers relaxed on the necessity of the case. Persons who kept houses of ill-fame were with them incompetent witnesses; yet among the maxims of that law the rule is well known of *Testes lupanares in re lupanari.*

In ordinary cases, they require two witnesses to prove a fact; and therefore they held, "that, if there be but one witness, and no probable grounds of presumption of some kind (*nulla argumenta*), that one witness is by no means to be heard"; and it is not inelegantly said in that case, *Non jus deficit, sed probatio*, "The failure is not in the law, but in the proof." But if other grounds of presumption appear,

* Bartolus.

one witness is to be heard: "for it is not necessary that one crime should be established by one sort of proof only, as by witnesses, or by documents, or by presumptions; all the modes of evidence may be so conjoined, that, where none of them alone would affect the prisoner, all the various concurrent proofs should overpower him like a storm of hail." This is held particularly true in cases where crimes are secret, and detection difficult. The necessity of detecting and punishing such crimes superseded, in the soundest authors, this theoretic aim at perfection, and obliged technical science to submit to practical expedience. "*In re criminali*," said the rigorists, "*probationes debent esse evidentes et luce meridiana clariores*": and so undoubtedly it is in offences which admit such proof. But reflection taught them that even their favorite rules of incompetence must give way to the exigencies of distributive justice. One of the best modern writers on the Imperial Criminal Law, particularly as practised in Saxony, (Carpzovius,) says, — "This alone I think it proper to remark, that even incompetent witnesses are sometimes admitted, if otherwise the truth cannot be got at; and this particularly in facts and crimes which are of difficult proof"; and for this doctrine he cites Farinacius, Mascardus, and other eminent Civilians who had written on Evidence. He proceeds afterwards, — "However, this is to be taken with a caution, that the impossibility of otherwise discovering the truth is not construed from hence, that other witnesses were not actually concerned, but that, from the nature of the crime, or from regard had to the place and time, other witnesses could not be present." Many other passages from the same authority, and from others to

a similar effect, might be added; we shall only remark shortly, that Gaill, a writer on the practice of that law the most frequently cited in our own courts, gives the rule more in the form of a maxim, — "that the law is contented with such proof as *can* be made, if the subject *in its nature* is difficult of proof." * And the same writer, in another passage, refers to another still more general maxim, (and a sound maxim it is,) that the power and means of proof ought not to be narrowed, but enlarged, that the truth may not be concealed: "*Probationum facultas non angustari, sed ampliari debeat, ne veritas occultetur.*" †

On the whole, your Committee can find nothing in the writings of the learned in this law, any more than they could discover anything in the Law of Parliament, to support any one of the determinations given by the Judges, and adopted by the Lords, against the evidence which your Committee offered, whether direct and positive, or merely (as for the greater part it was) circumstantial, and produced as a ground to form legitimate presumption against the defendant: nor, if they were to admit (which they do not) this Civil Law to be of authority in furnishing any rule in an impeachment of the Commons, more than as it may occasionally furnish a principle of reason on a new or undetermined point, do they find any rule or any principle, derived from that law, which could or ought to have made us keep back the evidence which we offered; on the contrary, we rather think those rules and principles to be in agreement with our conduct.

As to the Canon Law, your Committee, finding it

* Lib. II. Obs. 149, § 9. † Lib. I. Obs. 91, § 7.

to have adopted the Civil Law with no very essen tial variation, does not feel it necessary to make any particular statement on that subject.

Your Committee then came to examine into the authorities in the English law, both as it has prevailed for many years back, and as it has been recently received in our courts below. They found on the whole the rules rather less strict, more liberal, and less loaded with positive limitations, than in the Roman law. The origin of this latitude may perhaps be sought in this circumstance, which we know to have relaxed the rigor of the Roman law: courts in England do not judge upon evidence, *secundum allegata et probata*, as in other countries and under other laws they do, but upon verdict. By a fiction of law they consider the jury as supplying, in some sense, the place of testimony. One witness (and for that reason) is allowed sufficient to convict, in cases of felony, which in other laws is not permitted.

In ancient times it has happened to the law of England (as in pleading, so in matter of evidence) that a rigid strictness in the application of technical rules has been more observed than at present it is. In the more early ages, as the minds of the Judges were in general less conversant in the affairs of the world, as the sphere of their jurisdiction was less extensive, and as the matters which came before them were of less variety and complexity, the rule being in general right, not so much inconvenience on the whole was found from a literal adherence to it as might have arisen from an endeavor towards a liberal and equitable departure, for which further experience, and a more continued cultivation of equity as a science, had not then so fully prepared them. In those times

that judicial policy was not to be condemned. We find, too, that, probably from the same cause, most of their doctrine leaned towards the restriction; and the old lawyers being bred, according to the then philosophy of the schools, in habits of great subtlety and refinement of distinction, and having once taken that bent, very great acuteness of mind was displayed in maintaining every rule, every maxim, every presumption of law creation, and every fiction of law, with a punctilious exactness: and this seems to have been the course which laws have taken in every nation.* It was probably from this rigor, and from a sense of its pressure, that, at an early period of our law, far more causes of criminal jurisdiction were carried into the House of Lords and the Council Board, where laymen were judges, than can or ought to be at present.

As the business of courts of equity became more enlarged and more methodical, — as magistrates, for a long series of years, presided in the Court of Chancery, who were not bred to the Common Law, — as commerce, with its advantages and its necessities, opened a communication more largely with other countries, — as the Law of Nature and Nations (always a part of the law of England) came to be cultivated, — as an increasing empire, as new views and new combinations of things were opened, — this antique rigor and overdone severity gave way to

* Antiqua jurisprudentia aspera quidem illa, tenebricosa, et tristis, non tam in æquitate quam in verborum superstitione fundata, eaque Ciceronis ætatem fere attigit, mansitque annos circiter CCCL. Quæ hanc excepit, viguitque annos fere septuaginta novem, superiori longe humanior; quippe quæ magis utilitate communi, quam potestate verborum, negotia moderaretur. — Gravina, p. 86.

Philip Yorke, First Earl of Hardwicke
(Lord Chancellor Hardwicke)
From a painting by Thomas Hudson, in the National Portrait Gallery

the accommodation of human concerns, for which rules were made, and not human concerns to bend to them.

At length, Lord Hardwicke, in one of the cases the most solemnly argued that has been in man's memory, with the aid of the greatest learning at the bar, and with the aid of all the learning on the bench, both bench and bar being then supplied with men of the first form, declared from the bench, and in concurrence with the rest of the Judges, and with the most learned of the long robe, the able council on the side of the old restrictive principles making no reclamation, "that the judges and sages of the law have laid it down that there is but ONE general rule of evidence, — *the best that the nature of the case will admit.*"* This, then, the master rule, that governs all the subordinate rules, does in reality subject itself and its own virtue and authority *to the nature of the case*, and leaves no rule at all of an independent, abstract, and substantive quality. Sir Dudley Ryder, (then Attorney-General, afterwards Chief-Justice,) in his learned argument, observed, that "it is extremely proper that there should be *some* general rules in relation to evidence; but *if exceptions were not allowed to them, it would be better to demolish all the general rules.* There is no general rule without exception that we know of but this, — that *the best evidence shall be admitted which the nature of the case will afford.* I will show that rules as general as this are broke in upon *for the sake of allowing evidence.* There is no rule that seems more binding than that a man shall not be admitted an evidence in his own case, and yet the Statute of Hue and Cry is

* Omichund *v.* Barker, Atk. I.

an exception. A man's books are allowed to be evidence, or, which is in substance the same, his servant's books, *because the nature of the case requires it*, — as in the case of a brewer's servants. Another general rule, that a wife cannot be witness against her husband, has been broke in upon in cases of treason. Another exception to the general rule, that a man may not be examined without oath, — the last words of a dying man are given in evidence in the case of murder." Such are the doctrines of this great lawyer.

Chief-Justice Willes concurs with Lord Hardwicke as to dispensing with strict rules of evidence. "Such evidence," [he says,] "is to be admitted as the *necessity* of the case will allow of: as, for instance, a marriage at Utrecht, certified under the seal of the minister there, and of the said town, and that they cohabited together as man and wife, was held to be sufficient proof that they were married." This learned judge (commenting upon Lord Coke's doctrine, and Serjeant Hawkins's after him, that the oaths of Jews and pagans were not to be taken) says, "that this notion, though advanced by so great a man, is contrary to religion, common sense, and common humanity, and I think the devils, to whom he has delivered them, could not have suggested anything worse." Chief-Justice Willes, admitting Lord Coke to be a great lawyer, then proceeds in very strong terms, and with marks of contempt, to condemn "*his narrow notions*"; and he treats with as little respect or decorum the ancient authorities referred to in defence of such notions.

The principle of the departure from those rules is clearly fixed by Lord Hardwicke; he lays it down as

follows:—"The first ground judges have gone upon, in departing from strict rules, is *absolute strict necessity*; 2dly, a *presumed* necessity." Of the first he gives these instances:—"In the case of writings subscribed by witnesses, if all are dead, the proof of one of their hands is sufficient to establish the deed. Where an original is lost, a copy may be admitted: if no copy, then a proof by witnesses who have *heard* the deed: and yet it is a thing the law abhors, to admit the memory of man for evidence." This enlargement through two stages of proof, both of them contrary to the rule of law, and both abhorrent from its principles, are by this great judge accumulated upon one another, and are admitted from necessity, to accommodate human affairs, and to prevent that which courts are by every possible means instituted to prevent,—A FAILURE OF JUSTICE. And this necessity is not confined within the strict limits of physical causes, but is more lax, and takes in *moral and even presumed and argumentative necessity*, a necessity which is in fact nothing more than a great degree of expediency. The law creates a fictitious necessity against the rules of evidence in favor of the convenience of trade: an exception which on a similar principle had before been admitted in the Civil Law, as to mercantile causes, in which the books of the party were received to give full effect to an insufficient degree of proof, called, in the nicety of their distinctions, a *semiplena probatio*.*

But to proceed with Lord Hardwicke. He observes, that "a tradesman's books" (that is, the acts of the party interested himself) "are admitted as evidence, though no *absolute necessity*, but by rea-

* Gail, Lib. II. Obs. 99. § 5.

son of a *presumption* of necessity only, *inferred* from the nature of commerce." "No rule," continued Lord Hardwicke, "can be more settled than that testimony is not to be received but upon oath"; but he lays it down, that an oath itself may be dispensed with. "There is another instance," says he, "where the lawful oath may be dispensed with, — where our courts admit evidence for the Crown with out oath."

In the same discussion, the Chief-Baron (Parker) cited cases in which *all* the rules of evidence had given way. "There is not a more general rule," says he, "than that hearsay cannot be admitted, nor husband and wife as witnesses against each other; and yet it is *notorious* that from necessity they have been allowed, — not an *absolute* necessity, but a *moral* one."

It is further remarkable, in this judicial argument, that exceptions are allowed not only to rules of evidence, but that the rules of evidence themselves are not altogether the same, where the subject-matter varies. The Judges have, to facilitate justice, and to favor commerce, even adopted the rules of *foreign* laws. They have taken for granted, and would not suffer to be questioned, the regularity and justice of the proceedings of foreign courts; and they have admitted them as evidence, not only of the fact of the decision, but of the right as to its legality. "Where there are foreign parties interested, and in commercial matters, the rules of evidence are not quite the same as in other instances in courts of justice: the case of Hue and Cry, Brownlow, 47. A feme covert is not a lawful witness against her husband, except in cases of treason, but has been admitted in civil

cases.* The testimony of a public notary is evidence by the law of France: contracts are made before a public notary, and no other witness necessary. I should think it would be no doubt at all, if it came in question here, whether this would be a valid contract, but a testimony from persons of that credit and reputation would be received as a very good proof in foreign transactions, and would authenticate the contract." †

These cases show that courts always govern themselves by these rules in cases of foreign transactions. To this principle Lord Hardwicke accords; and enlarging the rule of evidence by the nature of the subject and the exigencies of the case, he lays it down, "that it is a common and *natural* presumption, that persons of the Gentoo religion should be principally apprised of facts and transactions in their own country. As the English have only a factory in this country, (for it is in the empire of the Great Mogul,) if we should admit this evidence [Gentoo evidence on a Gentoo oath], it would be agreeable to the genius of the law of England." For this he cites the proceedings of our Court of Admiralty, and adopts the author who states the precedent, "that this Court will give credit to the sentence of the Court of Admiralty in France, and take it to be according to right, and will not examine their proceedings: for it would be found very inconvenient, if one kingdom should, by peculiar laws, correct the judgments and pro-

* N. B. — In some criminal cases also, though not of treason, husband is admitted to prove an assault upon his wife, for the King, ruled by Raymond, Chief-Justice, Trin. 11th Geo., King *v.* Azire. And for various other exceptions see Buller's Nisi Prius, 286, 287.

† Cro. Charl. 365.

ceedings of another kingdom." Such is the genius of the law of England, that these two principles, of the general moral necessities of things, and the nature of the case, overrule every other principle, even those rules which seem the very strongest. Chief-Baron Parker, in answer to an objection made against the infidel deponent, "that the plaintiff ought to have shown that he could not have the evidence of Christians," says, "that, repugnant to natural justice, in the Statute of Hue and Cry, the robbed is admitted to be witness of the robbery, as *a moral or presumed necessity is sufficient.*" The same learned magistrate, pursuing his argument in favor of liberality, in opening and enlarging the avenues to justice, does not admit that "the authority of one or two cases" is valid against reason, equity, and convenience, the vital principles of the law. He cites Wells *v.* Williams, 1 Raymond, 282, to show that the necessity of trade has mollified the too rigorous rules of the old law, in their restraint and discouragement of aliens. "A Jew may sue at *this* day, but *heretofore he could not*, for then they were looked upon as enemies, but now commerce has taught the world more humanity; and therefore held that an alien enemy, commorant here by the license of the King, and under his protection, may maintain a debt upon a bond, though he did not come with safe-conduct." So far Parker, concurring with Raymond. He proceeds: — "It was objected by the defendant's counsel, that this is a novelty, and that what never has been done ought not to be done." The answer is, "*The law of England is not confined to particular cases, but is much more governed by reason than by any one case whatever.* The true rule is laid down by Lord

Vaughan, fol. 37, 38. 'Where the law,' saith he, 'is *known and clear*, the Judges must determine as the law is, without regard to the inequitableness or inconveniency: these defects, if they happen in the law, can only be remedied by Parliament. But where the law is doubtful and not clear, the Judges ought to interpret the law to be as is most consonant to equity, and what is least inconvenient.'"

These principles of equity, convenience, and natural reason Lord Chief-Justice Lee considered in the same ruling light, not only as guides in matter of interpretation concerning law in general, but in particular as controllers of the whole law of evidence, which, being artificial, and made for convenience, is to be governed by that convenience for which it is made, and is to be wholly subservient to the [illegible] principles of substantial justice. "I do apprehend," said that Chief-Justice, "that the rules of evidence are to be considered as *artificial* rules, framed by men for *convenience in courts of justice*. This is a case that ought to be looked upon in that light, and I take it that considering evidence in this way [viz. according to natural justice] *is agreeable to the genius of the law of England.*"

The sentiments of Murray, then Solicitor-General, afterwards Lord Mansfield, are of no small weight in themselves, and they are authority by being judicially adopted. His ideas go to the growing [illegible] of the law, by making its liberality keep pace with the demands of justice and the actual concerns of the world: not restricting the infinitely diversified occasions of men and the rules of natural justice with artificial circumscriptions, but conforming our jurisprudence to the growth of our commerce and of our

empire. This enlargement of our concerns he appears, in the year 1744, almost to have foreseen, and he lived to behold it. "The arguments on the other side," said that great light of the law, (that is, arguments against admitting the testimony in question from the novelty of the case,) "prove nothing. Does it follow from thence, that no witnesses can be examined in a case that never specifically existed before, or that an action cannot be brought in a case that never happened before? *Reason* (being stated to be the first ground of all laws by the author of the book called 'Doctor and Student') must determine the case. Therefore the only question is, Whether, *upon principles of reason, justice, and convenience*, this witness be admissible? Cases in law depend upon the *occasions* which gave rise to them. All occasions do not arise at once: now a particular species of Indians appears; hereafter another species of Indians may arise. A statute can seldom take in all cases. Therefore the Common Law, that works itself pure by rules drawn from the fountain of justice, is for this reason superior to an act of Parliament." *

From the period of this great judgment to the trial of Warren Hastings, Esquire, the law has gone on continually working itself pure (to use Lord Mansfield's expression) by rules drawn from the fountain of justice. "General rules," said the same person, when he sat upon the bench, "are wisely established for attaining justice with ease, certainty, and dispatch; but the great end of them being *to do justice*, the Court will see that it be really obtained. The courts have been more liberal of late years in their determi-

* Omichund *v.* Barker, 1st Atkyns, ut supra.

nations, and have more endeavored to attend to the *real justice* of the case than formerly." On another occasion, of a proposition for setting aside a verdict, he said, "This seems to be the true way to come at justice, and what we therefore ought to do; for the true text is, *Boni judicis est ampliare justitiam* (not *jurisdictionem*, as has been often cited)."* In conformity to this principle, the supposed rules of evidence have, in late times and judgments, instead of being drawn to a greater degree of strictness, been greatly relaxed.

"*All evidence is according to the subject-matter to which it is applied.* There is a great deal of difference between length of time that operates as a bar to a claim and that which is used only by way of evidence. Length of time used merely by way of evidence may be left to the consideration of the jury, to be credited or not, or to draw their inferences one way or the other, according to circumstances. *I do not know an instance in which proof may not be supplied.*"† In all cases of evidence Lord Mansfield's maxim was, *to lean to admissibility*, leaving the objections which were made to competency to go to credit, and to be weighed in the minds of the jury after they had heard it.‡ In objections to wills, and to the testimony of witnesses to them, he thought "it clear that the Judges ought to lean *against* objections to the formality."§

Lord Hardwicke had before declared, with great

* Rex *v.* Philips, Burrow, Vol. I. p. 301, 302, 304.

† Mayor of Hull *v.* Horner, Cowper's Reports, 109.

‡ Abrahams *v.* Bunn, Burrow, Vol. IV. p. 2254. The whole case well worth reading.

§ Wyndham *v.* Chetwynd, Burrow, Vol. I. p. 421.

truth, "that the boundaries of what goes to the credit and what to the competency *are very nice, and the latter carried too far*"; and in the same case he said, "that, unless the objection appeared to him to carry a strong danger of perjury, and some apparent advantage might accrue to the witness, he was always inclined to let it go to his credit, only *in order to let in a proper light to the case, which would otherwise be shut out;* and *in a doubtful case*, he said, it was generally his custom *to admit the evidence*, and give such directions to the jury as the nature of the case might require."*

It is a known rule of evidence, that an interest in the matter to be supported by testimony disqualifies a witness; yet Lord Mansfield held, "that *nice* objections to a remote interest which could not be paid or released, though they held in other cases, were not allowed to disqualify a witness to a will, as parishioners might have [prove?] a devise to the use of the poor of the parish forever." He went still nearer, and his doctrine tends so fully to settle the principles of departure from or adherence to rules of evidence, that your Committee inserts part of the argument at large. "The disability of a witness from interest is very different from a positive incapacity. If a deed must be acknowledged before a judge or notary public, every other person is under a positive incapacity to authenticate it; but objections of interest are deductions from natural reason, and proceed upon a presumption of too great a bias in the mind of the witness, and the public utility of rejecting partial testimony. Presumptions stand no longer than till the contrary is proved. The presumption of bias may be taken off

* King *v.* Bray.

by showing the witness has a [as ?] great or a greater interest the other way, or that he has given it up. The presumption of public utility may be answered by showing that it would be very inconvenient, under the particular circumstances, not to receive such testimony. Therefore, from the course of business, necessity, and other reasons of expedience, *numberless exceptions* are allowed to the *general* rule."*

These being the principles of the latter jurisprudence, the Judges have suffered no positive rule of evidence to counteract those principles. They have even suffered subscribing witnesses to a will which recites the soundness of mind in the testator to be examined to prove his insanity, and then the court received evidence to overturn that testimony and to destroy the credit of those witnesses. They were five in number, who attested to a will and codicil. They were admitted to annul the will they had themselves attested. Objections were taken to the competency of one of the witnesses in support of the will against its subscribing witnesses: 1st, That the witness was an executor in trust, and so liable to actions; 2dly, As having acted under the trust, whereby, if the will were set aside, he would be liable to answer for damages incurred by the sale of the deceased's chambers to a Mr. Frederick. Mr. Frederick offered to submit to a rule to release, for the sake of public justice. Those who maintained the objection cited Siderfin, a reporter of much authority, 51, 115, and 1st Keble, 134. Lord Mansfield, Chief-Justice, did not controvert those authorities; but in the course of obtaining substantial justice he treated both of them with equal contempt, though determined by judges of high repu-

* Wyndham *v.* Chetwynd.

tation. His words are remarkable: "We do not *now* sit here to take our rules of evidence from Siderfin and Keble." He overruled the objection upon more recent authorities, which, though not in similar circumstances, he considered as within the reason. The Court did not think it necessary that the witness should release, as he had offered to do. "It appeared on this trial," says Justice Blackstone, "that a black conspiracy was formed to set aside the gentleman's will, without any foundation whatever." A prosecution against three of the testamentary witnesses was recommended, who were afterwards convicted of perjury.* Had strict formalities with regard to evidence been adhered to in any part of this proceeding, that very black conspiracy would have succeeded, and those black conspirators, instead of receiving the punishment of their crimes, would have enjoyed the reward of their perjury.

Lord Mansfield, it seems, had been misled, in a certain case, with regard to precedents. His opinion was against the reason and equity of the supposed practice, but he supposed himself not at liberty to give way to his own wishes and opinions. On discovering his error, he considered himself as freed from an intolerable burden, and hastened to undo his former determination. "There are no precedents," said he, with some exultation, "which stand in the way of our determining *liberally*, *equitably*, and according to the *true* intention of the parties." In the same case, his learned assessor, Justice Wilmot, felt the same sentiments. His expressions are remarkable: — "Courts of law ought to concur with courts of equity in the execution of

* Lowe v. Joliffe, 1 Black. J. p. 366.

those powers which are very convenient to be inserted in settlements; and they ought not to listen to nice distinctions that savor of the schools, but to be guided by true good sense and manly reason. After the Statute of Uses, it is much to be lamented that the courts of Common Law had not adopted all the rules and maxims of courts of equity. This would have prevented the absurdity of receiving costs in one court and paying them in another."*

Your Committee does not produce the doctrine of this particular case as directly applicable to their charge, no more than several of the others here cited. We do not know on what precedents or principles the evidence proposed by us has been deemed inadmissible by the Judges; therefore against the grounds of this rejection we find it difficult directly to oppose anything. These precedents and these doctrines are brought to show the general temper of the courts, their growing liberality, and the general tendency of all their reasonings and all their determinations to set aside all such technical subtleties or formal rules, which might stand in the way of the discovery of truth and the attainment of justice. The cases are adduced for the principles they contain.

The period of the cases and arguments we have cited was that in which large and liberal principles of evidence were more declared, and more regularly brought into system. But they had been gradually improving; and there are few principles of the later decisions which are not to be found in determinations on cases prior to the time we refer to. Not to overdo this matter, and yet to bring it with some degree of clearness before the House, your Committee will re-

* Burrow, 1147. Zouch, ex dimiss. Woolston, v. Woolston.

fer but to a few authorities, and those which seem most immediately to relate to the nature of the cause intrusted to them. In Michaelmas, 11 Will. III., the King *v.* the Warden of the Fleet, a witness, who had really been a prisoner, and voluntarily suffered to escape, was produced to prove the escape. To the witness it was objected, that he had given a bond to be a true prisoner, which he had forfeited by escaping: besides, he had been retaken. His testimony was allowed; and by the Court, among other things, it was said, in secret transactions, if any of the parties concerned are not to be, for the necessity of the third, admitted as evidence, it will be impossible to detect the practice: as in cases of the Statute of Hue and Cry, the party robbed shall be a witness to charge the hundred; and in the case of Cooke *v.* Watts in the Exchequer, where one who had been prejudiced by the will was admitted an evidence to prove it forged.* So in the case of King *v.* Parris,† where a feme covert was admitted as a witness for *fraudulently* drawing her in, when sole, to give a warrant of attorney for confessing a judgment on an unlawful consideration, whereby execution was sued out against her husband, and Holt, Chief-Justice, held that a feme covert could not, by law, be a witness to convict one on an information; yet, in Lord Audley's case, it being a rape on her person, she was received to give evidence against him, and the Court concurred with him, because it was the best evidence the nature of the thing would allow. This decision of Holt refers to others more early, and all on the same principle;

* In this single point Holt did not concur with the rest of the judges.

† 1st Siderfin, p. 431.

and it is not of this day that this one great principle of eminent public expedience, this moral necessity, "that crimes should not escape with impunity," * has in all cases overborne all the common juridical rules of evidence, — it has even prevailed over the first and most natural construction of acts of Parliament, and that in matters of so penal a nature as high treason. It is known that statutes made, not to open and enlarge, but on fair grounds to straiten proofs, require two witnesses in cases of high treason. So it was understood, without dispute and without distinction, until the argument of a case in the High Court of Justice, during the Usurpation. It was the case of the Presbyterian minister, Love, tried for high treason against the Commonwealth, in an attempt to restore the King. In this trial, it was contended for, and admitted, that one witness to one overt act, and one to another overt act of the same treason, ought to be deemed sufficient.† That precedent, though furnished in times from which precedents were cautiously drawn, was received as authority throughout the whole reign of Charles II.; it was equally followed after the Revolution; and at this day it is undoubted law. It is not so from the natural or technical rules of construction of the act of Parliament, but from the principles of juridical policy. All the judges who have ruled it, all the writers of credit who have written upon it, assign this reason, and this only, — *that treasons, being plotted in secrecy, could in few cases be otherwise brought to punishment.*

The same principle of policy has dictated a princi-

* Interest reipublicæ ut maleficia ne remaneant impunita.

† Love's Trial, State Trials, Vol. II. p. 144, 171 to 173, and 177 and Foster's Crown Law, p. 235.

ple of relaxation with regard to severe rules of evidence, in all cases similar, though of a lower order in the scale of criminality. It is against fundamental maxims that an accomplice should be admitted as a witness: but accomplices are admitted from the policy of justice, otherwise confederacies of crime could not be dissolved. There is no rule more solid than that a man shall not entitle himself to profit by his own testimony. But an informer, in case of highway robbery, may obtain forty pounds to his own profit by his own evidence: this is not in consequence of positive provision in the act of Parliament; it is a provision of policy, lest the purpose of the act should be defeated.

Now, if policy has dictated this very large construction of an act of Parliament concerning high treason, if the same policy has dictated exceptions to the clearest and broadest rules of evidence in other highly penal causes, and if all this latitude is taken concerning matters for the greater part within our insular bounds, your Committee could not, with safety to the larger and more remedial justice of the Law of Parliament, admit any rules or pretended rules, uncorrected and uncontrolled by circumstances, to prevail in a trial which regarded offences of a nature as difficult of detection, and committed far from the sphere of the ordinary practice of our courts.

If anything of an over-formal strictness is introduced into the trial of Warren Hastings, Esquire, it does not seem to be copied from the decisions of these tribunals. It is with great satisfaction your Committee has found that the reproach of "disgraceful subtleties," inferior rules of evidence which pre-

vent the discovery of truth, of forms and modes of proceeding which stand in the way of that justice the forwarding of which is the sole rational object of their invention, cannot fairly be imputed to the Common Law of England, or to the ordinary practice of the courts below.

CIRCUMSTANTIAL EVIDENCE, ETC.

THE rules of evidence in civil and in criminal cases, in law and in equity, being only reason methodized, are certainly the same. Your Committee, however, finds that the far greater part of the law of evidence to be found in our books turns upon questions relative to civil concerns. Civil cases regard property: now, although property itself is not, yet almost everything concerning property and all its modifications is, of artificial contrivance. The rules concerning it become more positive, as connected with positive institution. The legislator therefore always, the jurist frequently, may ordain certain methods by which alone they will suffer such matters to be known and established; because their very essence, for the greater part, depends on the arbitrary conventions of men. Men act on them with all the power of a creator over his creature. They make fictions of law and presumptions of law (*præsumptiones juris et de jure*) according to their ideas of utility; and against those fictions, and against presumptions so created, they do and may reject all evidence. However, even in these cases there is some restraint. Lord Mansfield has let in a liberal spirit against the fictions of law themselves; and he declared that he would do what in one case* he actually did, and most wisely,

* Coppendale *v.* Bridgen, 2 Burrow, 814.

that he would admit evidence against a fiction of law, when the fiction militated against the policy on which it was made.

Thus it is with things which owe their existence to men; but where the subject is of a physical nature, or of a moral nature, independent of their conventions, men have no other reasonable authority than to register and digest the results of experience and observation. Crimes are the actions of physical beings with an evil intention abusing their physical powers against justice and to the detriment of society: in this case fictions of law and artificial presumptions (*juris et de jure*) have little or no place. The presumptions which belong to criminal cases are those natural and popular presumptions which are only observations turned into maxims, like adages and apophthegms, and are admitted (when their grounds are established) in the place of proof, where better is wanting, but are to be always over turned by counter proof.

These presumptions mostly go to the *intention*. In all criminal cases, the crime (except where the law itself implies malice) consists rather in the intention than the action. Now the intention is proved but by two ways: either, 1st, by confession, — this first case is rare, but simple, — 2dly, by circumstantial proof, — this is difficult, and requires care and pains. The connection of the intention and the circumstances is plainly of such a nature as more to depend on the sagacity of the observer than on the excellence of any rule. The pains taken by the Civilians on that subject have not been very fruitful; and the English law-writers have, perhaps as wisely, in a manner abandoned the pursuit. In truth, it

seems a wild attempt to lay down any rule for the proof of intention by circumstantial evidence. All the acts of the party, — all things that explain or throw light on these acts, — all the acts of others relative to the affair, that come to his knowledge, and may influence him, — his friendships and enmities, his promises, his threats, the truth of his discourses, the falsehood of his apologies, pretences, and explanations, his looks, his speech, his silence where he was called to speak, — everything which tends to establish the connection between all these particulars, — every circumstance, precedent, concomitant, and subsequent, become parts of circumstantial evidence. These are in their nature infinite, and cannot be comprehended within any rule or brought under any classification.

Now, as the force of that presumptive and conjectural proof rarely, if ever, depends on one fact only, but is collected from the number and accumulation of circumstances concurrent in one point, we do not find an instance, until this trial of Warren Hastings, Esquire, (which has produced many novelties,) that attempts have been made by any court to call on the prosecutor for an account of the purpose for which he means to produce each particle of this circumstantial evidence, to take up the circumstances one by one, to prejudge the efficacy of each matter separately in proving the point, — and thus to break to pieces and to garble those facts, upon the multitude of which, their combination, and the relation of all their component parts to each other and to the culprit, the whole force and virtue of this evidence depends. To do anything which can destroy this collective effect is to deny circumstantial evidence.

Your Committee, too, cannot but express their surprise at the particular period of the present trial when the attempts to which we have alluded first began to be made. The two first great branches of the accusation of this House against Warren Hastings, Esquire, relate to public and notorious acts, capable of direct proof, — such as the expulsion of Cheyt Sing, with its consequences on the province of Benares, and the seizure of the treasures and jaghires of the Begums of Oude. Yet, in the proof of those crimes, your Committee cannot justly complain that we were very narrowly circumscribed in the production of much circumstantial as well as positive evidence. We did not find any serious resistance on this head, till we came to make good our charges of secret crimes, — crimes of a class and description in the proof of which all judges of all countries have found it necessary to relax almost all their rules of competency: such crimes as peculation, pecuniary frauds, extortion, and bribery. Eight out of nine of the questions put to the Judges by the Lords, in the first stage of the prosecution, related to circumstances offered in proof of these secret crimes.

Much industry and art have been used, among the illiterate and unexperienced, to throw imputations on this prosecution, and its conduct, because so great a proportion of the evidence offered on this trial (especially on the latter charges) has been circumstantial. Against the prejudices of the ignorant your Committee opposes the judgment of the learned. It is known to them, that, when this proof is in its greatest perfection, that is, when it is most abundant in circumstances, it is much superior to positive proof; and for this we have the authority of the

learned judge who presided at the trial of Captain Donellan. "On the part of the prosecution, a great deal of evidence has been laid before you. It is all circumstantial evidence, and in its nature it must be so: for, in cases of this sort, no man is weak enough to commit the act in the presence of other persons, or to suffer them to see what he does at the time: and therefore it can only be made out by circumstances, either before the committing of the act, at the time when it was committed, or subsequent to it. And a presumption, which necessarily arises from circumstances, is very often more convincing and more satisfactory than any other kind of evidence: because it is not within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together as to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all, of these circumstances. But if the circumstances are such as, when laid together, bring conviction to your minds, it is then fully equal, if not, as I told you before, more convincing than positive evidence." In the trial of Donellan no such selection was used as we have lately experienced: no limitation to the production of every matter, before, at, and after the fact charged. The trial was (as we conceive) rightly conducted by the learned judge: because secret crimes, such as secret assassination, poisoning, bribery, peculation, and extortion, (the three last of which this House has charged upon Mr. Hastings,) can very rarely be proved in any other way. That way of proof is made to give satisfaction to a searching, equitable, and intelligent mind: and there must not be a failure of justice. Lord Mansfield has said that he did

not know a case in which proof might not be supplied.*

Your Committee has resorted to the trial of Donellan, and they have and do much rely upon it, first, on account of the known learning and ability of the judge who tried the cause, and the particular attention he has paid to the subject of evidence, which forms a book in his treatise on *Nisi Prius;* — next, because, as the trial went *wholly* on circumstantial evidence, the proceedings in it furnish some of the most complete and the fullest examples on that subject; — thirdly, because the case is recent, and the law cannot be supposed to be materially altered since the time of that event.

Comparing the proceedings on that trial, and the doctrines from the bench, with the doctrines we have heard from the woolsack, your Committee cannot comprehend how they can be reconciled. For the Lords compelled the Managers to declare for what purpose they produced each separate member of their circumstantial evidence: a thing, as we conceive, not usual, and particularly not observed in the trial of Donellan. We have observed in that trial, and in most others which we have had occasion to resort to, that the prosecutor is suffered to proceed narratively and historically, without interruption. If, indeed, it appears on the face of the narration that what is represented to have been said, written, or done did not come to the knowledge of the prisoner, a question sometimes, but rarely, has been asked, whether the prisoner could be affected with the knowledge of it. When a connection with the person of the prisoner has been in any way shown, or even promised to be

* Vide supra.

shown, the evidence is allowed to go on without further opposition. The sending of a sealed letter,— the receipt of a sealed letter, inferred from the delivery to the prisoner's servant,— the bare possession of a paper written by any other person, on the presumption that the contents of such letters or such paper were known to the prisoner,— and the being present when anything was said or done, on the presumption of his seeing or hearing what passed, have been respectively ruled to be sufficient. If, on the other hand, no circumstance of connection has been proved, the judge, in summing up, has directed the jury to pay no regard to a letter or conversation the proof of which has so failed: a course much less liable to inconvenience, where the same persons decide both the law and the fact.*

To illustrate the difficulties to which your Committee was subjected on this head, we think it sufficient to submit to the House (reserving a more full discussion of this important point to another occasion) the following short statement of an incident which occurred in this trial.

By an express order of the Court of Directors, (to which, by the express words of the act of Parliament under which he held his office, he was ordered to yield obedience,) Mr. Hastings and his colleagues were directed to make an inquiry into all offences of bribery and corruption in office. On the 11th of March a charge in writing of bribery and corruption

* Girdwood's Case, Leach, p. 128. Gordon's Case, Ibid. p. 245. Lord Preston's Case, St. Tr. IV. p. 439. Layer's Case, St. Tr. VI. p. 279. Foster's Crown Law, p. 198. Canning's Trial, St. Tr. X. p. 263, 270. Trial of the Duchess of Kingston, St. Tr XI. p. 244. Trial of Huggins, St. Tr. IX. p. 119, 120, 135.

in office was brought against himself. On the 13th of the same month, the accuser, a man of high rank, the Rajah Nundcomar, appears personally before the Council to make good his charge against Mr. Hastings before his own face. Mr. Hastings thereon fell into a very intemperate heat, obstinately refused to be present at the examination, attempted to dissolve the Council, and contumaciously retired from it. Three of the other members, a majority of the Council, in execution of their duty, and in obedience to the orders received under the act of Parliament, proceeded to take the evidence, which is very minute and particular, and was entered in the records of the Council by the regular official secretary. It was afterwards read in Mr. Hastings's own presence, and by him transmitted, under his own signature, to the Court of Directors. A separate letter was also written by him, about the same time, desiring, on his part, that, in any inquiry into his conduct, "not a single word should escape observation." This proceeding in the Council your Committee, in its natural order, and in a narrative chain of circumstantial proof, offered in evidence. It was not permitted to be read; and on the 20th and 21st of May, 1789, we were told from the woolsack, "that, when a paper is not evidence by itself," (such this part of the Consultation, it seems, was reputed,) "a party who wishes to introduce a paper of that kind is called upon not only to state, but to make out on proof, *the whole of the grounds upon which he proceeds to make that paper proper evidence;* that the evidence that is produced must be *the demeanor* of the party respecting that paper; and it is the connection between them, *as material to the charge depending*, that will enable them to be produced."

Your Committee observes, that this was not a paper *foreign* to the prisoner, and sent to him *as a letter*, the receipt of which, and his conduct thereon, were to be brought home to him, to infer his guilt from his demeanor. It was an office document of his own department, concerning himself, and kept by officers of his own, and by himself transmitted, as we have said, to the Court of Directors. Its proof was in the record. The charge made against him, and his demeanor on being acquainted with it, were not in separate evidence. They all lay together, and composed a connected narrative of the business, authenticated by himself.

In that case it seems to your Committee extremely irregular and preposterous to demand previous and extraneous proofs of the demeanor of the party respecting the paper, and the connection between them, as *material to the charge* depending; for this would be to try what the effect and operation of the evidence would be on the issue of the cause, before its production.

The doctrine so laid down demands that every several circumstance should in itself be conclusive, or at least should afford a violent presumption: it must, we were told, without question, be material to the charge depending. But, as we conceive, its materiality, more or less, is not in the first instance to be established. To make it admissible, it is enough to give proof, or to raise a legal inference, of its connection both with the charge depending and the person of the party charged, where it does not appear on the face of the evidence offered. Besides, by this new doctrine, the materiality required to be shown must be decided from a consideration, not of the whole

circumstance, but in truth of one half of the circumstance, — of a demeanor unconnected with and unexplained by that on which it arose, though the connection between the demeanor of the party and the paper is that which must be shown to be material. Your Committee, after all they have heard, is yet to learn how the full force and effect of any demeanor, as evidence of guilt or innocence, can be known, unless it be also fully known *to what that demeanor applied*, — unless, when a person did or said anything, it be known, not generally and abstractedly, that a paper was read to him, but particularly and specifically *what were the contents of that paper:* whether they were matters lightly or weightily alleged, — within the power of the party accused to have confuted on the spot, if false, — or such as, though he might have denied, he could not instantly have disproved. The doctrine appeared and still appears to your Committee to be totally abhorrent from the genius of circumstantial evidence, and mischievously subversive of its use. We did, however, offer that extraneous proof which was demanded of us; but it was refused, as well as the office document.

Your Committee thought themselves the more bound to contend for every mode of evidence *to the intention*, because in many of the cases the gross fact was admitted, and the prisoner and his counsel set up pretences of public necessity and public service for his justification. No way lay open for rebutting this justification, but by bringing out all the circumstances attendant on the transaction.

ORDER AND TIME OF PRODUCING EVIDENCE.

YOUR Committee found great impediment in the production of evidence, not only on account of the general doctrines supposed to exist concerning its inadmissibility, drawn from its own alleged natural incompetency, or from its inapplicability under the pleading of the impeachment of this House, but also from the mode of proceeding in bringing it forward. Here evidence which we thought necessary to the elucidation of the cause was not suffered, upon the supposed rules of *examination in chief and cross-examination*, and on supposed rules forming a distinction between evidence *originally* produced on the charge and evidence offered on *the reply*.

On all these your Committee observes in general, that, if the rules which respect the substance of the evidence are (as the great lawyers on whose authority we stand assert they are) no more than rules of convenience, much more are those subordinate rules which regard the order, the manner, and the time of the arrangement. These are purely arbitrary, without the least reference to any fixed principle in the nature of things, or to any settled maxim of jurisprudence, and consequently are variable at every instant, as the conveniencies of the cause may require.

We admit, that, in the order of mere arrangement, there is a difference between examination of witnesses in chief and cross-examination, and that in general these several parts are properly cast according to the situation of the parties in the cause; but there neither is nor can be any precise rule to discriminate the exact bounds between examination and cross-examination. So as to time there is necessarily some

limit, but a limit hard to fix. The only one which can be fixed with any tolerable degree of precision is when the judge, after fully hearing all parties, is to consider of his verdict or his sentence. Whilst the cause continues under hearing in any shape, or in any stage of the process, it is the duty of the judge to receive every offer of evidence, apparently material, suggested to him, though the parties themselves, through negligence, ignorance, or corrupt collusion, should not bring it forward. A judge is not placed in that high situation merely as a passive instrument of parties. He has a duty of his own, independent of them, and that duty is to investigate the truth. There may be no prosecutor. In our law a permanent prosecutor is not of necessity. The Crown prosecutor in criminal cases is a grand jury; and this is dissolved instantly on its findings and its presentments. But if no prosecutor appears, (and it has happened more than once,) the court is obliged through its officer, the clerk of the arraigns, to examine and cross-examine every witness who presents himself; and the judge is to see it done effectually, and to act his own part in it,—and this as long as evidence shall be offered within the time which the mode of trial will admit.

Your Committee is of opinion, that, if it has happened that witnesses, or other kinds of evidence, have not been frequently produced after the closing of the prisoner's defence, or such evidence has not been in reply given, it has happened from the peculiar nature of our common judicial proceedings, in which all the matter of evidence must be presented whilst the bodily force and the memory or other mental faculties of men can hold out. This does not exceed the

compass of one natural day, or thereabouts; during that short space of time new evidence very rarely occurs for production by any of the parties; because the nature of men, joined to the nature of the tribunals, and of the mode of trial at Common Law (good and useful on the whole) prescribe limits which the mere principles of justice would of themselves never fix.

But in other courts, such as the Court of Chancery, the Courts of Admiralty Jurisdiction, except in prize causes under the act of Parliament, and in the Ecclesiastical Courts, wherein the trial is not by an inclosed jury in those courts, such strait limits are not of course necessary; the cause is continued by many adjournments; as long as the trial lasts, new witnesses are examined, even after the regular stage, for each party, in a special [illegible] stances to the sound discretion of the court, where the evidence offered is [illegible] or power of the party [illegible] to be material in the cause. [illegible] witnesses have been examined, [illegible] examined, not as the right of the [illegible] not unfrequent in some [illegible] and perfectly known to the judges of [illegible] Hall; who cannot be supposed [illegible] tice of the Court of Chancery [illegible] peals from the Admiralty and [illegible] delegates.

But as criminal [illegible] of the Civil and Canon Law [illegible]

* Harrison's Practice of Chancery [illegible] 1 Ch. Ca. [illegible] Evidence [illegible]

important in any court of this part of the kingdom, your Committee thinks it right to state the undisputed principle of the Imperial Law, from the great writer on this subject before cited by us,—from Carpzovius. He says, "that a doubt has arisen, whether, evidence being once given in a trial on a public prosecution, (*in processu inquisitorio*,) and the witnesses being examined, it may be allowed to form other and new articles and to produce new witnesses." Your Committee must here observe, that the *processus inquisitorius* is that proceeding in which the prosecution is carried on in the name of the judge acting *ex officio*, from that duty of his office which is called the *nobile officium judicis*. For the judge under the Imperial Law possesses both those powers, the inquisitorial and the judicial, which in the High Court of Parliament are more aptly divided and exercised by the different Houses; and in this kind of process the House will see that Carpzovius couples the production of new witnesses and the forming of new articles (the undoubted privilege of the Commons) as intimately and necessarily connected. He then proceeds to solve the doubt. "Certainly," says he, "there are authors who deny, that, after publication of the depositions, any new witnesses and proofs that can affect the prisoner ought to be received; which," says he, "is true in a case where a private prosecutor has intervened, who produces the witnesses. But if the judge proceeds by way of inquisition *ex officio*, then, even after the completion of the examination of witnesses against the prisoner, new witnesses may be received and examined, and, on new grounds of suspicion arising, new articles may be formed, according to the common opinion of the doctors; and as it is the

most generally received, so it is most agreeable to reason."* And in another chapter, relative to the ordinary criminal process by a private prosecutor, he lays it down, on the authority of Angelus, Bartolus, and others, that, after the right of the party prosecuting is expired, the judge, taking up the matter *ex officio*, may direct new witnesses and new proofs, even after publication.† Other passages from the same writer and from others might be added; but your Committee trusts that what they have produced is sufficient to show the general principles of the Imperial Criminal Law.

The High Court of Parliament bears in its modes of proceeding a much greater resemblance to the course of the Court of Chancery, the Admiralty, and Ecclesiastical Courts, (which are the King's courts too, and their law the law of the land,) than to those of the Common Law. The accusation is brought into Parliament, at this very day, by *exhibiting articles;* which your Committee is informed is the regular mode of commencing a criminal prosecution, where the office of the judge is promoted, in the Civil and Canon Law courts of this country. The answer, again, is usually specific, both to the fact and the law alleged in each particular article; which is agreeable to the proceeding of the Civil Law, and not of the Common Law.

Anciently the resemblance was much nearer and stronger. Selden, who was himself a great ornament of the Common Law, and who was personally engaged in most of the impeachments of his time, has written expressly on the judicature in Parliament.

* Carpz. Pract. Saxon. Crimin. Pars III. Quest. CXIV. No. 13.

† Ibid. Quest. CVI. No. 89.

In his fourth chapter, intituled, *Of Witnesses*, he lays down the practice of his time, as well as of ancient times, with respect to the proof by examination; and it is clearly a practice more similar to that of the Civil than the Common Law. "The practice at this day," says he, "is to swear the witnesses in open House, and then to examine them there, *or at a committee*, either upon *interrogatories* agreed upon in the House, or such as the committee in their discretion shall demand. Thus it was in ancient times, as shall appear by the precedents, so many as they are, they being very sparing to record those ceremonies, which I shall briefly recite: I then add those of later times."

Accordingly, in times so late as those of the trial of Lord Middlesex,* upon an impeachment of the Commons, the whole course of the proceeding, especially in the mode of adducing the evidence, was in a manner the same as in the Civil Law: depositions were taken, and publication regularly passed: and on the trial of Lord Strafford, both modes pointed out by Selden seem to have been indifferently used.

It follows, therefore, that this high court (bound by none of their rules) has a liberty to adopt the methods of any of the legal courts of the kingdom at its discretion; and in *sound* discretion it ought to adopt those which bear the nearest resemblance to its own constitution, to its own procedure, and to its exigencies in the promotion of justice. There are conveniencies and inconveniencies both in the shorter and the longer mode of trial. But to bring the methods observed (if such are in fact observed) in the former, only from necessity, into the latter,

* 22 Jac. I. 1624.

by choice, is to load it with the inconveniency of both, without the advantages of either. The chief benefit of any process which admits of adjournments is, that it may afford means of fuller information and more mature deliberation. If neither of the parties have a strict right to it, yet the court or the jury, as the case may be, ought to demand it.

Your Committee is of opinion, that all rules relative to laches or neglects in a party to the suit, which may cause nonsuit on the one hand or judgment by default in the other, all things which cause the party *cadere in jure*, ought not to be adhered to in the utmost rigor, even in civil cases; but still less ought that spirit which takes advantage of lapses and failures on either part to be suffered to govern in causes criminal. "Judges ought to lean against every attempt to nonsuit a plaintiff on objections which have no relation to the real merits. It is unconscionable in a defendant to take advantage of the *apices litigandi*; against such objections *every possible presumption ought to be made which ingenuity can suggest*. How disgraceful would it be to the administration of justice to allow chicane to obstruct right!"* This observation of Lord Mansfield applies equally to every means by which, indirectly as well as directly, the cause may fail upon any other principles than those of its merits. He thinks that all the resources of ingenuity ought to be employed to baffle chicane, not to support it. The case in which Lord Mansfield has delivered this sentiment

* Morris v. Pugh, Burrow Vol. III. p. 1242. See also Vol. II. Alder v. Chip; Vol. IV. Dickson v. Fisher; Gray v. Smythyes.—N. B. All from the same judge, and proceeding on the same principles.

is merely a civil one. In civil causes of *meum et tuum*, it imports little to the commonwealth, whether *Titus* or *Mævius* profits of a legacy, or whether *John à Nokes* or *John à Stiles* is seized of the manor of *Dale*. For which reason, in many cases, the private interests of men are left by courts to suffer by their own neglects and their own want of vigilance, as their fortunes are permitted to suffer from the same causes in all the concerns of common life. But in crimes, where the prosecution is on the part of the public, (as all criminal prosecutions are, except appeals,) the public prosecutor ought not to be considered as a plaintiff in a cause of *meum et tuum;* nor the prisoner, in such a cause, as a common defendant. In such a cause the state itself is highly concerned in the event: on the other hand, the prisoner may lose life, which all the wealth and power of all the states in the world cannot restore to him. Undoubtedly the state ought not to be weighed against justice; but it would be dreadful indeed, if causes of such importance should be sacrificed to petty regulations, of mere secondary convenience, not at all adapted to such concerns, nor even made with a view to their existence. Your Committee readily adopts the opinion of the learned Ryder, that it would be better, if there were no such rules, than that there should be no exceptions to them. Lord Hardwicke declared very properly, in the case of the Earl of Chesterfield against Sir Abraham Janssen, "that political arguments, in the fullest sense of the word, as they concerned the government of a nation, must be, and always have been, of great weight in the consideration of this court. Though there be no *dolus malus* in contracts, with regard to other persons, yet,

if the rest of mankind are concerned as well as the parties, it may be properly said, it regards the public utility." * Lord Hardwicke laid this down in a cause of *meum et tuum*, between party and party, where the public was concerned only remotely and in the example, — not, as in this prosecution, when the political arguments are infinitely stronger, the crime relating, and in the most eminent degree relating, to the public.

One case has happened since the time which is limited by the order of the House for this Report: it is so very important, that we think ourselves justified in submitting it to the House without delay. Your Committee, on the supposed rules here alluded to, has been prevented (as of right) from examining a witness of importance in the case, and one on whose supposed knowledge of his most hidden transactions the prisoner had himself, in all stages of this business, as the House well knows, endeavored to raise presumptions in favor of his cause. Indeed, it was his principal, if not only justification, as to the *intention*, in many different acts of corruption charged upon him. The witness to whom we allude is Mr. Larkins. This witness came from India after your Committee had closed the evidence of this House in chief, and could not be produced before the time of the reply. Your Committee was not suffered to examine him, — not, as they could find, on objections to the particular question as improper, but upon some or other of the general grounds (as they believe) on which Mr. Hastings resisted any evidence from him. The party, after having resisted his production, on the next sitting day admitted him, and by consent he

* Chesterfield *v.* Janssen, Atkyns's Reports, Vol. II.

was examined. Your Committee entered a protest on the minutes in favor of their right. Your Committee contended, and do contend, that, by the Law of Parliament, whilst the trial lasts, they have full right to call new evidence, as the circumstances may afford and the posture of the cause may demand it.

This right seems to have been asserted by the Managers for the Commons in the case of Lord Stafford, 32 Charles II.* The Managers in that case claimed it as the right of the Commons to produce witnesses for the purpose of fortifying their former evidence. Their claim was admitted by the court. It is an adjudged case in the Law of Parliament. Your Committee is well aware that the notorious perjury and infamy of the witnesses in the trial of Lord Stafford has been used to throw a shade of doubt and suspicion on all that was transacted on that occasion. But there is no force in such an objection. Your Committee has no concern in the defence of these witnesses, nor of the Lords who found their verdict on such testimony, nor of the morality of those who produced it. Much may be said to palliate errors on the part of the prosecutors and judges, from the heat of the times, arising from the great interests then agitated. But it is plain there may be perjury in witnesses, or even conspiracy unjustly to prosecute, without the least doubt of the legality and regularity of the proceedings in any part. This is too obvious and too common to need argument or illustration. The proceeding in Lord Stafford's case never has, now for an hundred and fourteen years, either in the warm controversies of parties, or in the cool disquisitions of lawyers or historians, been questioned. The per-

* State Trials, Vol. III. p. 170.

jury of the witnesses has been more doubted at some periods than the regularity of the process has been at any period. The learned lawyer who led for the Commons in that impeachment (Serjeant Maynard) had, near forty years before, taken a forward part in the great cause of the impeachment of Lord Strafford, and was, perhaps, of all men then in England, the most conversant in the law and usage of Parliament. Jones was one of the ablest lawyers of his age. His colleagues were eminent men.

In the trial of Lord Strafford, (which has attracted the attention of history more than any other, on account of the importance of the cause itself, the skill and learning of the prosecutors, and the eminent abilities of the prisoner,) after the prosecutors for the Commons had gone through their evidence on the articles, after the prisoner had also made his defence, either upon each severally, or upon each body of articles as they had been collected into one, and the Managers had in the same manner replied, when, previous to the general concluding reply of the prosecutors, the time of the general summing up (or recollection, as it was called) of the whole evidence on the part of Lord Strafford arrived, the Managers produced new evidence. Your Committee wishes to call the particular attention of the House to this case, as the contest between the parties did very nearly resemble the present, but principally because the sense of the Lords on the Law of Parliament, in its proceedings with regard to the reception of evidence, is there distinctly laid down: so is the report of the Judges, relative to the usage of the courts below, full of equity and reason, and in perfect conformity with the right for which we contended in favor of the public, and in

favor of the Court of Peers itself. The matter is as follows. Your Committee gives it at large.

"After this, the Lord Steward adjourned this House to Westminster Hall; and the Peers being all set there in their places, the Lord Steward commanded the Lieutenant of the Tower to bring forth the Earl of Strafford to the bar; which being done, the Lord Steward signified that both sides might make a recollection of their evidence, and the Earl of Strafford to begin first.

"Hereupon Mr. Glynn desired that before the Earl of Strafford began, that the Commons might produce two witnesses to the fifteenth and twenty-third articles, to prove that there be two men whose names are Berne; and so a mistake will be made clear. The Earl of Strafford desired that no new witnesses may be admitted against him, unless he might be permitted to produce witnesses on his part likewise; which the Commons consented to, so the Earl of Strafford would confine himself to those articles upon which he made reservations: but he not agreeing to that, and the Commons insisting upon it, the House was adjourned to the usual place above to consider of it; and after some debate, their Lordships thought it fit that the members of the Commons go on in producing new witnesses, as they shall think fit, to the fifteenth and twenty-third articles, and that the Earl of Strafford may presently produce such witnesses as are present, and such as are not, to name them presently, and to proceed on Monday next; and also, if the Commons and Earl of Strafford will proceed upon any other articles, upon new matter, they are to name the witnesses and articles on both sides presently, and to proceed on Monday next: but both sides may waive

it, if they will. The Lord Steward adjourned this House to Westminster Hall, and, being returned thither, signified what the Lords had thought fit for the better proceeding in the business. The Earl of Strafford, upon this, desiring not to be limited to any reservation, but to be at liberty for what articles are convenient for him to fortify with new witnesses,* to which the Commons not assenting, and for other scruples which did arise in the case, one of the Peers did desire that the House might be adjourned, to consider further of the particulars. Hereupon the Lord Steward adjourned the House to the usual place above.

"The Lords, being come up into the House, fell into debate of the business, and, for the better informing of their judgments what was the course and common justice of the kingdom, propounded this question to the Judges: 'Whether it be according to the course of practice and common justice, before the Judges in their several courts, for the prosecutors in behalf of the King, *during the time of trial, to produce witnesses to discover the truth*, and whether the prisoner may not do the like?' The Lord Chief-Justice delivered this as the unanimous opinions of himself and all the rest of the Judges: 'That, according to the course of practice and common justice, before them in their several courts, upon trial by jury, *as long as the prisoner is at the bar, and the jury not sent away*, either side may give their evidence and examine witnesses to discover truth; and this is all the opinion as we can give concerning the proceedings before us.' Upon some consideration after this, the House appointed the Earl of Bath, Earl of South'ton, Earl of

* Bis in originali.

Hartford, Earl of Essex, Earl of Bristol, and the Lord Viscount Say et Seale to draw up some reasons upon which the former order was made, which, being read as followeth, were approved of, as the order of the House: 'The gentlemen of the House of Commons did declare, that they challenge to themselves, by the common justice of the kingdom, that they, being prosecutors for the King, may bring any new proofs by witnesses during the time of the evidence being not fully concluded. The Lords, being judges, and so equal to them and the prisoner, conceived this their desire to be just and reasonable; and also that, by the same common justice, the prisoner may use the same liberty; and that, to avoid any occasions of delay, the Lords thought fit that the articles and witnesses be presently named, and such as may be presently produced to be used presently, [and such as cannot to be used on Monday,] and no further time to be given.' The Lord Steward was to let them know, that, if they will on both sides waive the use of new witnesses, they may proceed to the recollection of their evidence on both sides; if both sides will not waive it, then the Lord Steward is to read the precedent order; and if they will not proceed then, this House is to adjourn and rise."*

By this it will appear to the House how much this exclusion of evidence, *brought for the discovery of truth*, is unsupported either by Parliamentary precedent or by the rule as understood in the Common Law courts below; and your Committee (protesting, however, against being bound by any of the technical rules of inferior courts) thought, and think, they had a right to see such a body of precedents and arguments for

* Lords' Journals, 17 Ch. I. Die Sabbati, videlicet, 10° die Aprilis.

the rejection of evidence during trial, in some court or other, before they were in this matter stopped and concluded.

Your Committee has not been able to examine every criminal trial in the voluminous collection of the State Trials, or elsewhere; but having referred to the most laborious compiler of law and equity, Mr. Viner, who has allotted a whole volume to the title of Evidence, we find but one ruled case in a trial at Common Law, before or since, where new evidence for the discovery of truth has been rejected, as not being in due time. "A privy verdict had been given in B. R. 14 Eliz. for the defendant; but afterwards, before the inquest gave their verdict openly, the plaintiff prayed that he might give more evidence to the jury, he having (as it seemed) discovered that the jury had found against him: but the Justices would not admit him to do so; but after that Southcote J. had been in C. B. to ask the opinion of the Justices there, they took the verdict." * In this case the offer of new evidence was not during the trial. The trial was over; the verdict was actually delivered to the Judge; there was also an appearance that the discovery of the actual finding had suggested to the plaintiff the production of new evidence. Yet it appeared to the Judges so strong a measure to refuse evidence, whilst any, even formal, appearance remained that the trial was not closed, that they sent a Judge from the bench into the Common Pleas to obtain the opinion of their brethren there, before they could venture to take upon them to consider the time for production of evidence as elapsed. The case of refusal, taken with its circumstances, is full as strong an example in

* Dal. 80. Pl. 18. Anno 14 Eliz. apud Viner, Evid. p. 60.

favor of the report of the Judges in Lord Strafford's case as any precedent of admittance can be.

The researches of your Committee not having furnished them with any cases in which evidence has been rejected during the trial, as being out of time, we have found some instances in which it has been actually received,— and received not to repel any new matter in the prisoner's defence, but when the prisoner had called all his witnesses, and thereby closed his defence. A remarkable instance occurred on the trial of Harrison for the murder of Dr. Clenche. The Justices who tried the cause, viz., Lord Chief-Justice Holt, and the Justices Atkins and Nevil, admitted the prosecutor to call new evidence, for no other reason but that a new witness was then come into court, who had not been in court before.* These Justices apparently were of the same opinion on this point with the Justices who gave their opinion in the case of Lord Strafford.

Your Committee, on this point, as on the former, cannot discover any authority for the decision of the House of Lords in the Law of Parliament, or in the law practice of any court in this kingdom.

PRACTICE BELOW.

Your Committee, not having learned that the resolutions of the Judges (by which the Lords have been guided) were supported by any authority in law to which they could have access, have heard by rumor that they have been justified upon the practice of the courts in ordinary trials by commission of Oyer and Terminer. To give any legal precision to this term of

* State Trials, Vol. IV. p. 501.

practice, as thus applied, your Committee apprehends it must mean, that the judge in those criminal trials has so regularly rejected a certain kind of evidence, when offered there, that it is to be regarded in the light of a case frequently determined by legal authority. If such had been discovered, though your Committee never could have allowed these precedents as rules for the guidance of the High Court of Parliament, yet they should not be surprised to see the inferior judges forming their opinions on their own confined practice. Your Committee, in their inquiry, has found comparatively few reports of criminal trials, except the collection under the title of "State Trials," a book compiled from materials of very various authority; and in none of those which we have seen is there, as appears to us, a single example of the rejection of evidence similar to that rejected by the advice of the Judges in the House of Lords. Neither, if such examples did exist, could your Committee allow them to apply directly and necessarily, as a measure of reason, to the proceedings of a court constituted so very differently from those in which the Common Law is administered. In the trials below, the Judges decide on the competency of the evidence before it goes to the jury, and (under the correctives, in the use of their discretion, stated before in this Report) with great propriety and wisdom. Juries are taken promiscuously from the mass of the people. They are composed of men who, in many instances, in most perhaps, never were concerned in any causes, judicially or otherwise, before the time of their service. They have generally no previous preparation, or possible knowledge of the matters to be tried, or what is applicable or inapplicable to them; and they de-

cide in a space of time too short for any nice or critical disquisition. The Judges, therefore, of necessity, must forestall the evidence, where there is a doubt on its competence, and indeed observe much on its credibility, or the most dreadful consequences might follow. The institution of juries, if not thus qualified, could not exist. Lord Mansfield makes the same observation with regard to another corrective of the short mode of trial, — that of a *new trial.*

This is the law, and this its policy. The jury are not to decide on the competency of witnesses, or of any other kind of evidence, in any way whatsoever. Nothing of that kind can come before them. But the Lords in the High Court of Parliament are not, either actually or virtually, a jury. No legal power is interposed between them and evidence; they are themselves by law fully and exclusively equal to it. They are persons of high rank, generally of the best education, and of sufficient knowledge of the world; and they are a permanent, a settled, a corporate, and not an occasional and transitory judicature. But it is to be feared that the authority of the Judges (in the case of juries legal) may, from that example, weigh with the Lords further than its reason or its applicability to the judicial capacity of the Peers can support. It is to be feared, that if the Lords should think themselves bound implicitly to submit to this authority, that at length they may come to think themselves to be no better than jurors, and may virtually consent to a partition of that judicature which the law has left to them whole, supreme, uncontrolled, and final.

This final and independent judicature, because it is final and independent, ought to be very cautious with

regard to the rejection of evidence. If incompetent evidence is received by them, there is nothing to hinder their judging upon it afterwards according to its value: it may have no weight in their judgment. But if, upon advice of others, they previously reject information necessary to their proper judgment, they have no intermediate means of setting themselves right, and they injure the cause of justice without any remedy. Against errors of juries there is remedy by a new trial. Against errors of judges there is remedy, in civil causes, by demurrer and bills of exceptions; against their final mistake there is remedy by writ of error, in courts of Common Law. In Chancery there is a remedy by appeal. If they wilfully err in the rejection of evidence, there was formerly the terror existing of punishment by impeachment of the Commons. But with regard to the Lords, there is no remedy for error, no punishment for a wilful wrong.

Your Committee conceives it not improbable that this apparently total and unreserved submission of the Lords to the dictates of the judges of the inferior courts (no proper judges, in any light or in any degree, of the Law of Parliament) may be owing to the very few causes of *original* jurisdiction, and the great multitude of those of *appellate* jurisdiction, which come before them. In cases of appeal, or of error, (which is in the nature of an appeal,) the court of appeal is obliged to judge, not by *its own* rules, acting in another capacity, or by those which it shall choose *pro re nata* to make, but by the rules of the inferior court from whence the appeal comes. For the fault or the mistake of the inferior judge is, that he has not proceeded, as he ought to do, according to the law which he was to administer; and the correction,

if such shall take place, is to compel the court from whence the appeal comes to act as originally it ought to have acted, according to law, as the law ought to have been understood and practised in that tribunal. The Lords, in such cases of necessity, judge on the grounds of the law and practice of the courts below; and this they can very rarely learn with precision, but from the body of the Judges. Of course much deference is and ought to be had to their opinions. But by this means a confusion may arise (if not well guarded against) between what they do in their *appellate* jurisdiction, which is frequent, and what they ought to do in their *original* jurisdiction, which is rare; and by this the whole original jurisdiction of the Peers, and the whole law and usage of Parliament, at least in their virtue and spirit, may be considerably impaired.

After having thus submitted to the House the general tenor of the proceedings in this trial, your Committee will, with all convenient speed, lay before the House the proceedings on each head of evidence separately which has been rejected; and this they hope will put the House more perfectly in possession of the principal causes of the length of this trial, as well as of the injury which Parliamentary justice may, in their opinion, suffer from those proceedings.

APPENDIX.

No. I.

IN THE CASE OF EARL FERRERS.

APRIL 17, 1760.

[Foster's Crown Law, p. 138, fol. edit.]

THE House of Peers unanimously found Earl Ferrers guilty of the felony and murder whereof he stood indicted, and the Earl being brought to the bar, the High Steward acquainted him therewith; and the House immediately adjourned to the Chamber of Parliament, and, having put the following question to the Judges, adjourned to the next day.

"Supposing a peer, so indicted and convicted, ought by law to receive such judgment as aforesaid, and the day appointed by the judgment for execution should lapse before such execution done, whether a new time may be appointed for the execution, and by whom?"

On the 18th, the House then sitting in the Chamber of Parliament, the Lord Chief Baron, in the absence of the Chief-Justice of the Common Pleas, delivered in writing the opinion of the Judges, which they had agreed on and reduced into form that morning. His Lordship added many weighty reasons in support of the opinion, which he urged with great strength and propriety, and delivered with a becoming dignity.

To the Second Question.

"Supposing the day appointed by the judgment for execution should lapse before such execution done, (which, however, the law will not presume,) we are all of opinion that a new time may be appointed for the execution, either by the High Court of Parliament, before which such peer shall have been attainted, or by the Court of King's Bench, the Parliament not then sitting: the record of the attainder being properly removed into that court."

The reasons upon which the Judges founded their answer to the question relating to the further proceedings of the House after the High Steward's commission dissolved, which is usually done upon pronouncing judgment, may possibly require some further discussion. I will, therefore, before I conclude, mention those which weighed with me, and, I believe, with many others of the Judges.

Reasons, &c.

Every proceeding in the House of Peers, acting in its judicial capacity, whether upon writ of error, impeachment, or indictment, removed thither by *Certiorari*, is in judgment of law a proceeding before the King in Parliament; and therefore the House, in all those cases, may not improperly be styled the Court of our Lord the King in Parliament. This court is founded upon immemorial usage, upon the law and custom of Parliament, and is part of the original system of our Constitution. It is open for all the purposes of judicature, during the continuance of the Parliament: it openeth at the beginning and shutteth at the end of every session: just as the Court of

King's Bench, which is likewise in judgment of law held before the King himself, openeth and shutteth with the term. The authority of this court, or, if I may use the expression, its constant activity for the ends of public justice, independent of any special powers derived from the Crown, is not doubted in the case of writs of error from those courts of law whence error lieth in Parliament, and of impeachments for misdemeanors.

It was formerly doubted, whether, in the case of an impeachment for treason, and in the case of an indictment against a peer for any capital crime, removed into Parliament by *Certiorari*, whether in these cases the court can proceed to trial and judgment without an High Steward appointed by special commission from the Crown. This doubt seemeth to have arisen from the not distinguishing between a proceeding in the Court of the High Steward and that before the King in Parliament. The name, style, and title of office is the same in both cases: but the office, the powers and preëminences annexed to it, differ very widely; and so doth the constitution of the courts where the offices are executed. The identity of the name may have confounded our ideas, as equivocal words often do, if the nature of things is not attended to; but the nature of the offices, properly stated, will, I hope, remove every doubt on these points.

In the Court of the High Steward, he alone is judge in all points of law and practice; the peers triers are merely judges of fact, and are summoned by virtue of a precept from the High Steward to appear before him on the day appointed by him for the trial, *ut rei veritas melius sciri poterit.* The High

Steward's commission, after reciting that an indictment hath been found against the peer by the grand jury of the proper county, impowereth him to send for the indictment, to convene the prisoner before him at such day and place as he shall appoint, then and there to hear and determine the matter of such indictment; to cause the peers triers, *tot et tales, per quos rei veritas melius sciri poterit*, at the same day and place to appear before him; *veritateque inde compertâ*, to proceed to judgment according to the law and custom of England, and thereupon to award execution.* By this it is plain that the sole right of judicature is in cases of this kind vested in the High Steward; that it resideth solely in his person; and consequently, without this commission, which is but in nature of a commission of Oyer and Terminer, no one step can be taken in order to a trial; and that when his commission is dissolved, which he declareth by breaking his staff, the court no longer existeth.

But in a trial of a peer in full Parliament, or, to speak with legal precision, before the King in Parliament, for a capital offence, whether upon impeachment or indictment, the case is quite otherwise. Every peer present at the trial (and every temporal peer hath a right to be present in every part of the proceeding) voteth upon every question of law and fact, and the question is carried by the major vote: the High Steward himself voting merely as a peer and member of that court, in common with the rest of the peers, and in no other right.

* See Lord Clarendon's commission as High Steward, and the writs and precepts preparatory to the trial, in Lord Morley's case. VII. St. Tr.

It hath, indeed, been usual, and very expedient it is, in point of order and regularity, and for the solemnity of the proceeding, to appoint an officer for presiding during the time of the trial, and until judgment, and to give him the style and title of Steward of England: but this maketh no sort of alteration in the constitution of the court; it is the same court, founded in immemorial usage, in the law and custom of Parliament, whether such appointment be made or not. It acteth in its judicial capacity in every order made touching the time and place of the trial, the postponing the trial from time to time upon petition, according to the nature and circumstances of the case, the allowance or non-allowance of council to the prisoner, and other matters relative to the trial;* and all this before an High Steward hath been appointed. And so little was it apprehended, in some cases which I shall mention presently, that the existence of the court depended on the appointment of an High Steward, that the court itself directed in what manner and by what form of words he should be appointed. It hath likewise received and recorded the prisoner's confession, which amounteth to a conviction, before the appointment of an High Steward; and hath allowed to prisoners the benefit of acts of general pardon, where they appeared entitled to it, as well without the appointment of an High Steward as after his commission dissolved. And when, in the case of impeachments, the Commons have sometimes, at conferences between the Houses, attempted to interpose in matters preparatory to the trial, the general answer hath been, "This is a point of judicature upon which

* See the orders previous to the trial, in the cases of the Lords Kilmarnock, &c., and Lord Lovat, and many other modern cases.

the Lords will not confer; they impose silence upon themselves,"—or to that effect. I need not here cite instances; every man who hath consulted the Journals of either House hath met with many of them.

I will now cite a few cases, applicable, in my opinion, to the present question. And I shall confine myself to such as have happened since the Restoration; because, in questions of this kind, modern cases, settled with deliberation, and upon a view of former precedents, give more light and satisfaction than the deepest search into antiquity can afford; and also because the prerogatives of the Crown, the privileges of Parliament, and the rights of the subject in general appear to me to have been more studied and better understood at and for some years before that period than in former ages.

In the case of the Earl of Danby and the Popish lords then under impeachments, the Lords,* on the 6th of May, 1679, appointed time and place for hearing the Earl of Danby, by his council, upon the validity of his plea of pardon, and for the trials of the other lords, and voted an address to his Majesty, praying that he would be pleased to appoint an High Steward for those purposes. These votes were, on the next day, communicated to the Commons by message in the usual manner. On the 8th, at a conference between the Houses upon the subject-matter of that message, the Commons expressed themselves to the following effect:—"They cannot apprehend what should induce your Lordships to address his Majesty for an High Steward, for determining the validity of the pardon which hath been pleaded by the Earl of Danby, as also for the trial of the other

* Lords' Journals.

five lords, because they conceive the constituting an High Steward is not necessary, but that judgment may be given in Parliament upon impeachment without an High Steward"; and concluded with a proposition, that, for avoiding any interruption or delay, a committee of both Houses might be nominated, to consider of the most proper ways and methods of proceeding. This proposition the House of Peers, after a long debate, rejected: *Dissentientibus*, Finch,* Chancellor, and many other lords. However, on the 11th, the Commons' proposition of the 8th was upon a second debate agreed to; and the Lord Chancellor, Lord President, and ten other lords, were named of the committee, to meet and confer with a committee of the Commons. The next day the Lord President reported, that the committees of both Houses met that morning, and made an entrance into the business referred to them: that the Commons desired to see the commissions that are prepared for an High Steward at these trials, and also the commissions in the Lord Pembroke's and the Lord Morley's cases: that to this the Lords' committees said, — "*The High Steward is but Speaker pro tempore, and giveth his vote as well as the other lords; this changeth not the nature of the court;* and the Lords declared, they have power enough to proceed to trial, though the King should not name an High Steward: † that this seemed to be a satisfaction

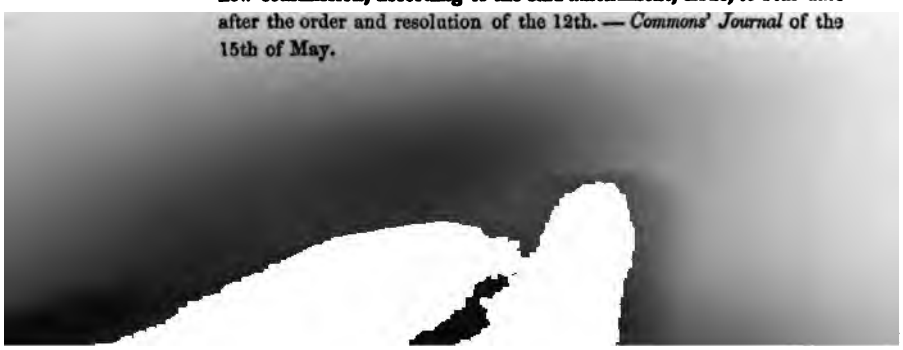
* Afterwards Earl of Nottingham.

† In the Commons' Journal of the 15th of May it standeth thus: — "Their Lordships further declared to the committee, that a Lord High Steward was made *hac vice* only; that, notwithstanding the making of a Lord High Steward, the court remained the same, and was not thereby altered, but still remained the Court of Peers in Parliament; that the Lord High Steward was but as a Speaker or Chairman, for the more orderly proceeding at the trials."

to the Commons, provided it was entered in the Lords' Journals, which are records." Accordingly, on the same day, "*It is declared and ordered by the Lords Spiritual and Temporal in Parliament assembled, that the office of an High Steward, upon trials of peers upon impeachments, is not necessary to the House of Peers; but that the Lords may proceed in such trials, if an High Steward be not appointed according to their humble desire.*" * On the 13th the Lord President reported, that the committees of both Houses had met that morning, and discoursed, in the first place, on the matter of a Lord High Steward, and had perused former commissions for the office of High Steward; and then, putting the House in mind of the order and resolution of the preceding day, proposed from the committees that a new commission might issue, so as the words in the commission may be thus changed: viz., Instead of, *Ac pro eo quod officium Seneschalli Angliæ, (cujus præsentia in hac parte requiritur,) ut accepimus, jam vacat*, may be inserted, *Ac pro eo quod proceres et magnates in Parliamento nostro assemblati nobis humiliter supplicaverunt ut Seneschallum Angliæ pro hac vice constituere dignaremur:* to which the House agreed.†

* This resolution my Lord Chief-Baron referred to and cited in his argument upon the second question proposed to the Judges, which is before stated.

† This amendment arose from an exception taken to the commission by the committee for the Commons, which, as it then stood, did in their opinion imply that the constituting a Lord High Steward was necessary. Whereupon it was agreed by the whole committee of Lords and Commons, that the commission should be recalled, and a new commission, according to the said amendment, issue, to bear date after the order and resolution of the 12th. — *Commons' Journal* of the 15th of May.



It must be admitted that precedents drawn from times of ferment and jealousy, as these were, lose much of their weight, since passion and party prejudice generally mingle in the contest; yet let it be remembered, that these are resolutions in which both Houses concurred, and in which the rights of both were thought to be very nearly concerned, — the Commons' right of impeaching with effect, and the whole judicature of the Lords in capital cases. For, if the appointment of an High Steward was admitted to be of absolute necessity, (however necessary it may be for the regularity and solemnity of the proceeding during the trial and until judgment, which I do not dispute,) every impeachment may, for a reason too obvious to be mentioned, be rendered ineffectual, and the judicature of the Lords in all capital cases nugatory.

It was from a jealousy of this kind, not at that juncture altogether groundless, and to guard against everything from whence the necessity of an High Steward in the case of an impeachment might be inferred, that the Commons proposed and the Lords readily agreed to the amendment in the Steward's commission which I have already stated. And it hath, I confess, great weight with me, that this amendment, which was at the same time directed in the cases of the five Popish lords, when commissions should pass for their trials, hath taken place in every commission upon impeachments for treason since that time.* And I cannot help remarking, that in the case of Lord Lovat, when neither the heat

* See, in the State Trials, the commissions in the cases of the Earl of Oxford, Earl of Derwentwater, and others, — Lord Wintoun and Lord Lovat.

of the times nor the jealousy of parties had any share in the proceeding, the House ordered, "That the commission for appointing a Lord High Steward shall be in the like form as that for the trial of the Lord Viscount Stafford, as entered in the Journal of this House on the 30th of November, 1680: except that the same shall be in the English language." *

I will make a short observation on this matter. The order, on the 13th of May, 1679, for varying the form of the commission, was, as appeareth by the Journal, plainly made in consequence of the resolution of the 12th, and was founded on it; and consequently the constant, unvarying practice with regard to the new form goeth, in my opinion, a great way towards showing, that, in the sense of all succeeding times, that resolution was not the result of faction or a blamable jealousy, but was founded in sound reason and true policy. It may be objected, that the resolution of the 12th of May, 1679, goeth no further than to a proceeding upon impeachment. The letter of the resolution, it is admitted, goeth no further. But this is easily accounted for: a proceeding by impeachment was the subject-matter of the conference, and the Commons had no pretence to interpose in any other. But what say the Lords? *The High Steward is but as a Speaker or Chairman pro tempore, for the more orderly proceeding at the trials; the appointment of him doth not alter the nature of the court, which still remaineth the Court of the Peers in Parliament.* From these premises they draw the conclusion I have mentioned. Are not these prem-

* See the proceedings printed by order of the House of Lords, 4th February, 1746.

ises equally true in the case of a proceeding upon indictment? They undoubtedly are.

It must likewise be admitted, that in the proceeding upon indictment the High Steward's commission hath never varied from the ancient form in such cases. The words objected to by the Commons, *Ac pro eo quod officium Seneschalli Angliæ, (cujus præsentia in hac parte requiritur,) ut accepimus, jam vacat,* are still retained; but this proveth no more than that the Great Seal, having no authority to vary in point of form, hath from time to time very prudently followed ancient precedents.

I have already stated the substance of the commission in a proceeding in the Court of the High Steward. I will now state the substance of that in a proceeding in the Court of the Peers in Parliament; and shall make use of that in the case of the Earl of Kilmarnock and others, as being the latest, and in point of form agreeing with the former precedents. The commission, after reciting that William, Earl of Kilmarnock, &c., stand indicted before commissioners of gaol-delivery in the County of Surrey, for high treason, in levying war against the King, and that the King intendeth that the said William, Earl of Kilmarnock, &c., shall be heard, examined, sentenced, and adjudged before himself, in this present Parliament, touching the said treason, and for that the office of Steward of Great Britain (whose presence is required upon this occasion) is now vacant, as we are informed, appointeth the then Lord Chancellor Steward of Great Britain, to bear, execute, and exercise (for this time) the said office, with all things due and belonging to the same office, in that behalf.

What, therefore, are the things due and belonging to the office in a case of this kind? Not, as in the Court of the High Steward, a right of judicature; for the commission itself supposeth that right to reside in a court then subsisting before the King in Parliament. The parties are to be there heard, sentenced, and adjudged. What share in the proceeding doth the High Steward, then, take? By the practice and usage of the Court of the Peers in Parliament, he giveth his vote as a member thereof, with the rest of the peers; but, for the sake of regularity and order, he presideth during the trial and until judgment, as Chairman or Speaker *pro tempore*. In that respect, therefore, it may be properly enough said, that his presence is required during the trial and until judgment, and in no other. Herein I see no difference between the case of an impeachment and of an indictment. I say, during the time of the trial and until judgment; because the court hath, as I observed before, from time to time done various acts, plainly judicial, before the appointment of an High Steward, and where no High Steward hath ever been appointed, and even after the commission dissolved. I will to this purpose cite a few cases.

I begin with the latest, because they are the latest, and were ruled with great deliberation, and for the most part upon a view of former precedents. In the case of the Earl of Kilmarnock and others, the Lords, on the 24th of June, 1746, ordered that a writ or writs of *Certiorari* be issued for removing the indictments before the House; and on the 26th, the writ, which is made returnable before the King in Parliament, with the return and indictments, was received and read. On the next day, upon the report of the

Lords' committees, that they had been attended by the two Chief-Justices and Chief-Baron, and had heard them touching the construction of the act of the 7th and 8th of King William, "for regulating trials in cases of high treason and misprision of treason," the House, upon reading the report, came to several resolutions, founded for the most part on the construction of that act. What that construction was appeareth from the Lord High Steward's address to the prisoners just before their arraignment. Having mentioned that act as one happy consequence of the Revolution, he addeth, — "However injuriously that revolution hath been traduced, whatever attempts have been made to subvert this happy establishment founded on it, your Lordships will now have the benefit of that law in its full extent."

I need not, after this, mention any other judicial acts done by the House in this case, before the appointment of the High Steward: many there are. For the putting a construction upon an act relative to the conduct of the court and the right of the subject at the trial, and in the proceedings preparatory to it, and this in a case entirely new, and upon a point, to say no more in this place, not extremely clear, was undoubtedly an exercise of authority proper only for a court having full cognizance of the cause.

I will not minutely enumerate the several orders made preparatory to the trial of Lord Lovat, and in the several cases I shall have occasion to mention, touching the time and place of the trial, the allowance or non-allowance of council, and other matters of the like kind, all plainly judicial; because the like orders occur in all the cases where a journal of the

preparatory steps hath been published by order of the Peers. With regard to Lord Lovat's case, I think the order directing the form of the High Steward's commission, which I have already taken notice of, is not very consistent with the idea of a court whose powers can be supposed to depend, at any point of time, upon the existence or dissolution of that commission.

In the case of the Earl of Derwentwater and the other lords impeached at the same time, the House received and recorded the confessions of those of them who pleaded guilty, long before the *teste* of the High Steward's commission, which issued merely for the solemnity of giving judgment against them upon their conviction. This appeareth by the commission itself. It reciteth, that the Earl of Derwentwater and others, *coram nobis in præsenti Parliamento*, had been impeached by the Commons for high treason, and had, *coram nobis in præsenti Parliamento*, pleaded guilty to that impeachment; and that the King, intending that the said Earl of Derwentwater and others, *de et pro proditione unde ipsi ut præfertur impetit', accusat', et convict' existunt coram nobis in præsenti Parliamento, secundum legem et consuetudinem hujus regni nostri Magnæ Britanniæ, audientur, sententientur, et adjudicentur*, constituteth the then Lord Chancellor High Steward (*hac vice*) to do and execute all things which to the office of High Steward in that behalf do belong. The receiving and recording the confession of the prisoners, which amounted to a conviction, so that nothing remained but proceeding to judgment, was certainly an exercise of judicial authority, which no assembly, how great soever, not having full cogni zance of the cause, could exercise.

In the case of Lord Salisbury, who had been impeached by the Commons for high treason, the Lords, upon his petition, allowed him the benefit of the act of general pardon passed in the second year of William and Mary, so far as to discharge him from his imprisonment, upon a construction they put upon that act, no High Steward ever having been appointed in that case. On the 2d of October, 1690, upon reading the Earl's petition, setting forth that he had been a prisoner for a year and nine months in the Tower, notwithstanding the late act of free and general pardon, and praying to be discharged, the Lords ordered the Judges to attend on the Monday following, to give their opinions whether the said Earl be pardoned by the act. On the 6th the Judges delivered their opinions, that, if his offence was committed before the 13th of February, 1688, and not in Ireland or beyond the seas, he is pardoned. Whereupon it was ordered that he be admitted to bail, and the next day he and his sureties entered into a recognizance of bail, himself in ten thousand pounds, and two sureties in five thousand pounds each; and on the 30th he and his sureties were, after a long debate, discharged from their recognizance.* It will not be material to inquire whether the House did right in discharging the Earl without giving the Commons an opportunity of being heard; since, in fact, they claimed and exercised a right of judicature without an High Steward, — which is the only use I make of this case.

They did the same in the case of the Earl of Carnwarth, the Lords Widdrington and Nairn, long after the High Steward's commission dissolved. These lords had judgment passed on them at the same time

* See the Journals of the Lords.

that judgment was given against the Lords Derwentwater, Nithsdale, and Kenmure; and judgment being given, the High Steward immediately broke his staff, and declared the commission dissolved. They continued prisoners in the Tower under reprieves, till the passing the act of general pardon, in the 3d of King George I. On the 21st of November, 1717, the House being informed that these lords had severally entered into recognizances before one of the judges of the Court of King's Bench for their appearance in the House in this session of Parliament, and that the Lords Carnwarth and Widdrington were attending accordingly, and that the Lord Nairn was ill at Bath and could not then attend, the Lords Carnwarth and Widdrington were called in, and severally at the bar prayed that their appearance might be recorded; and likewise prayed the benefit of the act* for his Majesty's general and free pardon. Whereupon the House ordered that their appearance be recorded, and that they attend again to-morrow, in order to plead the pardon; and the recognizance of the Lord Nairn was respited till that day fortnight. On the morrow the Lords Carnwarth and Widdrington, then attending, were called in; and the Lord Chancellor acquainted them severally, that it appeared by the records of the House that they severally stood attainted of high treason, and asked them severally what they had to say why they should not be remanded to the Tower of London. Thereupon they severally, upon their knees, prayed the benefit of the act, and that they might have their lives and liberty pursuant thereunto. And the Attorney-General, who then attended for that purpose, declaring that he had no

* 3 Geo. I. c. 19.

objection on his Majesty's behalf to what was prayed, conceiving that those lords, not having made any escape since their conviction, were entitled to the benefit of the act, the House, after reading the clause in the act relating to that matter,* agreed that they should be allowed the benefit of the pardon, as to their lives and liberties, and discharged their recognizances, and gave them leave to depart without further day given for their appearance. On the 6th of December following, the like proceedings were had, and the like orders made, in the case of Lord Nairn.†

I observe that the Lord Chancellor did not ask these lords what they had to say why execution should not be awarded. There was, it is probable, some little delicacy as to that point. But since the allowance of the benefit of the act, as to life and liberty, which was all that was prayed, was an effectual bar to any future imprisonment on that account, and also to execution, and might have been pleaded as such in any court whatsoever, the whole proceeding must be admitted to have been in a court having complete jurisdiction in the case, notwithstanding the High Steward's commission had been long dissolved, — which is all the use I intended to make of this case.

I will not recapitulate: the cases I have cited, and the conclusions drawn from them, are brought into a very narrow compass. I will only add, that it would sound extremely harsh to say, that a court of criminal jurisdiction, founded in immemorial usage, and held in judgment of law before the King himself, can in any event whatever be under an utter incapacity of proceeding to trial and judgment, either of condemnation or acquittal, the ultimate objects of every

* See sect. 45 of the 3d Geo. I. † Lords' Journals.

criminal proceeding, without certain supplemental powers derived from the Crown.

These cases, with the observations I have made on them, I hope sufficiently warrant the opinion of the Judges upon that part of the second question, in the case of the late Earl Ferrers, which I have already mentioned, — and also what was advanced by the Lord Chief-Baron in his argument on that question, — "That, though the office of High Steward should happen to determine before execution done according to the judgment, yet the Court of the Peers in Parliament, where that judgment was given, would subsist for all the purposes of justice during the sitting of the Parliament," and consequently, that, in the case supposed by the question, that court might appoint a new day for the execution.

No. II.

QUESTIONS referred by the Lords to the Judges, in the Impeachment of Warren Hastings, Esquire, and the Answers of the Judges. — Extracted from the Lords' Journals and Minutes.

First.

Question. — Whether, when a witness produced and examined in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it be competent for such prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to

have been made by such witness before a committee of the House of Commons, or in any other place, and by demanding of him whether the particulars so suggested were not the answer he had so made?

1788, February 29. — Pa. 418.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the question of law put to them on Friday, the 29th of February last, as follows: — "That, when a witness produced and examined in a criminal proceeding by a prosecutor disclaims all knowledge of any matter so interrogated, it is not competent for such prosecutor to pursue such examination, by proposing a question containing the particulars of an answer supposed to have been made by such witness before a committee of the House of Commons, or in any other place, and by demanding of him whether the particulars so suggested were not the answer he had so made."

1788, April 10. — Pa. 592.

Second.

Question. — Whether it be competent for the Managers to produce an examination taken without oath by the rest of the Council in the absence of Mr. Hastings, the Governor-General, charging Mr. Hastings with corruptly receiving 3,54,105 rupees, which examination came to his knowledge, and was by him transmitted to the Court of Directors as a proceeding of the said Councillors, in order to introduce the proof of his demeanor thereupon, — it being alleged by the Managers for the Commons, that he took

no steps to clear himself, in the opinion of the said Directors, of the guilt thereby imputed, but that he took active means to prevent the examination by the said Councillors of his servant Cantoo Baboo?

1789, May 14. — Pa. 677.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question, in the negative, — and gave his reasons. 1789, May 20. — Pa. 718.

Third.

Question. — Whether the instructions from the Court of Directors of the United Company of Merchants of England trading to the East Indies, to Warren Hastings, Esquire, Governor-General, Lieutenant-General John Clavering, the Honorable George Monson, Richard Barwell, Esquire, and Philip Francis, Esquire, Councillors, (constituted and appointed the Governor-General and Council of the said United Company's Presidency of Fort William in Bengal, by an act of Parliament passed in the last session, intituled, "An act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe,") of the 29th of March, 1774, Par. 31, 32, and 35, the Consultation of the 11th March, 1775, the Consultation of the 13th of March, 1775, up to the time that Mr. Hastings left the Council, the Consultation of the 20th of March, 1775, the letter written by Mr. Hastings to the Court of Directors on the 25th of March, 1775, (it being alleged that Mr. Hastings took no steps to explain or defend his conduct,) are sufficient to introduce the

examination of Nundcomar, or the proceedings of the rest of the Councillors, on said 13th of March, after Mr. Hastings left the Council, — such examination and proceedings charging Mr. Hastings with corruptly receiving 3,54,105 rupees?

1789, May 21. — Pa. 730.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question, in the negative, — and gave his reasons. 1789, May 27. — Pa. 771.

Fourth.

Question. — Whether the public accounts of the Nizamut and Bhela, under the seal of the Begum, attested also by the Nabob, and transmitted by Mr. Goring to the Board of Council at Calcutta, in a letter bearing date the 29th June, 1775, received by them, recorded without objection on the part of Mr. Hastings, and transmitted by him likewise without objection to the Court of Directors, and alleged to contain accounts of money received by Mr. Hastings, — and it being in proof, that Mr. Hastings, on the 11th of May, 1778, moved the Board to comply with the requisitions of the Nabob Mobarek ul Dowlah to reappoint the Munny Begum and Rajah Gourdas (who made up those accounts) to the respective offices they before filled, and which was accordingly resolved by the Board, — ought to be read?

1789, June 17. — Pa. 855.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the

Judges upon the said question, in the negative, — and gave his reasons. 1789, June 24. — Pa. 922.

Fifth.

Question. — Whether the paper delivered by Sir Elijah Impey, on the 7th of July, 1775, in the Supreme Court, to the Secretary of the Supreme Council, in order to be transmitted to the Council as the resolution of the Court in respect to the claim made for Roy Rada Churn, on account of his being vakeel of the Nabob Mobarek ul Dowlah, — and which paper was the subject of the deliberation of the Council on the 31st July, 1775, Mr. Hastings being then present, and was by them transmitted to the Court of Directors, as a ground for such instructions from the Court of Directors as the occasion might seem to require, — may be admitted as evidence of the actual state and situation of the Nabob with reference to the English government? 1789, July 2. — Pa. 1001.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question, in the affirmative, — and gave his reasons. 1789, July 7. — Pa. 1030.

Sixth.

Question. — Whether it be or be not competent to the Managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent, at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge to Kelleram, fell into arrear and was deficient, — and

whether, if proof were offered that the rent fell in arrear immediately after the letting, the evidence would in that case be competent?

1790, April 22. — Pa. 364.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question, — "That it is not competent to the Managers for the Commons to give evidence upon the charge in the sixth article, to prove that the rent, at which the defendant, Warren Hastings, let the lands mentioned in the said sixth article of charge to Kelleram, fell into arrear and was deficient," — and gave his reasons.

1790, April 27. — Pa. 388.

Seventh.

Question. — Whether it be competent for the Managers for the Commons to put the following question to the witness, upon the sixth article of charge, viz.: "What impression the letting of the lands to Kelleram and Cullian Sing made on the minds of the inhabitants of that country"?

1790, April 27. — Pa. 391.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question, — "That it is not competent to the Managers for the Commons to put the following question to the witness, upon the sixth article of charge, viz.: What impression the letting of the lands to Kelleram and Cullian Sing made on the minds of the inhabitants of that country," — and gave his reasons. 1790, April 29. — Pa. 413.

Eighth.

Question. — Whether it be competent to the Managers for the Commons to put the following question to the witness, upon the seventh article of charge, viz.: "Whether more oppressions did actually exist under the new institution than under the old"?

1790, April 29. — Pa. 415.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question, — "That it is not competent to the Managers for the Commons to put the following question to the witness, upon the seventh article of charge, viz.: Whether more oppressions did actually exist under the new institution than under the old," — and gave his reasons.

1790, May 4. — Pa. 428.

Ninth

Question. — Whether the letter of the 13th April, 1781, can be given in evidence by the Managers for the Commons, to prove that the letter of the 5th of May, 1781, already given in evidence, relative to the abolition of the Provincial Council and the subsequent appointment of the Committee of Revenue, was false in any other particular than that which is charged in the seventh article of charge?

1790, May 20. — Pa. 557.

Answer. — The Lord Chief-Baron of the Court of Exchequer delivered the unanimous opinion of the Judges upon the said question, — "That it is not competent for the Managers on the part of the Commons to give any evidence on the seventh article of

impeachment, to prove that the letter of the 5th of May, 1781, is false in any other particular than that wherein it is expressly charged to be false," — and gave his reasons. 1790, June 2. — Pa. 634.

Tenth.

Question. — Whether it be competent to the Managers for the Commons to examine the witness to any account of the debate which was had on the 9th day of July, 1778, previous to the written minutes that appear upon the Consultation of that date?

1794, February 25. — Lords' Minutes.

Answer. — The Lord Chief-Justice of the Court of Common Pleas delivered the unanimous opinion of the Judges upon the said question, — " That it is not competent to the Managers for the Commons to examine the witness, Philip Francis, Esquire, to any account of the debate which was had on the 9th day of July, 1778, previous to the written minutes that appear upon the Consultation of that date," — and gave his reasons.

1794, February 27. — Lords' Minutes.

Eleventh.

Question. — Whether it is competent for the Managers for the Commons, in reply, to ask the witness, whether, between the time of the original demand being made upon Cheyt Sing and the period of the witness's leaving Bengal, it was at any time in his power to have reversed or put a stop to the demand upon Cheyt Sing, — the same not being relative to any matter originally given in evidence by the defendant?

1794, February 27. — Lords' Minutes.

Answer. — The Lord Chief-Justice of the Court of Common Pleas delivered the unanimous opinion of the Judges upon the said question, — "That it is not competent for the Managers for the Commons to ask the witness, whether, between the time of the original demand being made upon Cheyt Sing and the period of his leaving Bengal, it was at any time in his power to have reversed or put a stop to the demand upon Cheyt Sing, — the same not being relative to any matter originally given in evidence by the defendant," — and gave his reasons.

1794, March 1. — Lords' Minutes.

Twelfth.

Question. — Whether a paper, read in the Court of Directors on the 4th of November, 1783, and then referred by them to the consideration of the Committee of the whole Court, and again read in the Court of Directors on the 19th of November, 1783, and amended and ordered by them to be published for the information of the Proprietors, can be received in evidence, in reply, to rebut the evidence, given by the defendant, of the thanks of the Court of Directors, signified to him on the 28th of June, 1785? 1794, March 1. — Lords' Minutes.

Answer. — Whereupon the Lord Chief-Justice of the Court of Common Pleas, having conferred with the rest of the Judges present, delivered their unanimous opinion upon the said question, in the negative, — and gave his reasons.

1794, March 1. — Lords' Minutes.

Sir John Wilks

From a painting by Thomas Hudson, in the National Portrait Gallery

REMARKS

IN

VINDICATION OF THE PRECEDING REPORT.

THE preceding Report was ordered to be printed for the use of the members of the House of Commons, and was soon afterwards reprinted and published, in the shape of a pamphlet, by a London bookseller. In the course of a debate which took place in the House of Lords, on Thursday, the 22d of May, 1794, on the Treason and Sedition Bills, Lord Thurlow took occasion to mention "a pamphlet which his Lordship said was published by one Debrett, of Piccadilly, and which had that day been put into his hands, reflecting highly upon the Judges and many members of that House. This pamphlet was, he said, scandalous and indecent, and such as he thought ought not to pass unnoticed. He considered the vilifying and misrepresenting the conduct of judges and magistrates, intrusted with the administration of justice and the laws of the country, to be a crime of a very heinous nature, and most destructive in its consequences, because it tended to lower them in the opinion of those who ought to feel a proper reverence and respect for their high and important stations; and that, when it was stated to the ignorant or the wicked that their judges and magistrates were ignorant and corrupt, it tended to lessen their respect for and obedience to the laws themselves, by teaching them to think ill of those who admin-

istered them." On the next day Mr. Burke called the attention of the House of Commons to this matter, in a speech to the following effect.

MR. SPEAKER, — The license of the present times makes it very difficult for us to talk upon certain subjects in which Parliamentary order is involved. It is difficult to speak of them with regularity, or to be silent with dignity and wisdom. All our proceedings have been constantly published, according to the discretion and ability of individuals out of doors, with impunity, almost ever since I came into Parliament. By usage, the people have obtained something like a prescriptive right to this abuse. I do not justify it; but the abuse is now grown so inveterate that to punish it without previous notice would have an appearance of hardship, if not injustice. The publications I allude to are frequently erroneous as well as irregular, but they are not always so; what they give as the reports and resolutions of this House have sometimes been given correctly. And it has not been uncommon to attack the proceedings of the House itself under color of attacking these irregular publications. Notwithstanding, however, this colorable plea, this House has in some instances proceeded to punish the persons who have thus insulted it. You will here, too, remark, Sir, that, when a complaint is made of a piratical edition of a work, the authenticity of the original work is admitted, and whoever attacks the matter of the work itself in these unauthorized publications does not attack it less than if he had attacked it in an edition authorized by the writer.

I understand, Sir, that in a place which I greatly respect, and by a person for whom I have likewise a great veneration, a pamphlet published by a Mr. Debrett has been very heavily censured. That pamphlet, I hear, (for I have not read it,) purports to be a Report made by one of your Committees to this House. It has been censured, as I am told, by the person and in the place I have mentioned, in very harsh and very unqualified terms. It has been there said, (and so far very truly,) that at all times, and particularly at this time, it is necessary, for the preservation of order and the execution of the law, that the characters and reputation of the Judges of the Courts in Westminster Hall should be kept in the highest degree of respect and reverence; and that in this pamphlet, described by the name of a libel, the characters and conduct of those Judges upon a late occasion have been aspersed, as arising from ignorance or corruption.

Sir, combining all the circumstances, I think it impossible not to suppose that this speech does reflect upon a Report which, by an order of the Committee on which I served, I had the honor of presenting to this House. For anything improper in that Report I am responsible, as well as the members of the Committee, to this House, and to this House only. The matters contained in it, and the observations upon them, are submitted to the wisdom of the House, that you may act upon both in the time and manner that to your judgment may seem most expedient, — or that you may not act upon them at all, if you should think that most expedient for the public good. Your Committee has obeyed your orders; it has done its duty in making that Report.

I am of opinion, with the eminent person by whom that Report is censured, that it is necessary at this time very particularly that the authority of Judges should be preserved and supported. This, however, does not depend so much upon us as upon themselves. It is necessary to preserve the dignity and respect of all the constitutional authorities. This, too, depends in part upon ourselves. It is necessary to preserve the respect due to the House of Lords: it is full as necessary to preserve the respect due to the House of Commons, upon which (whatever may be thought of us by some persons) the weight and force of all other authorities within this kingdom essentially depend. If the power of the House of Commons be degraded or enervated, no other can stand. We must be true to ourselves. We ought to animadvert upon any of our members who abuse the trust we place in them; we must support those who, without regard to consequences, perform their duty.

With regard to the matter which I am now submitting to your consideration, I must say for your Committee of Managers and for myself, that the Report was deliberately made, and does not, as I conceive, contain any very material error, nor any undue or indecent reflection upon any person or persons whatever. It does not accuse the Judges of ignorance or corruption. Whatever it says it does not say calumniously. That kind of language belongs to persons whose eloquence entitles them to a free use of epithets. The Report states that the Judges had given their opinions secretly, contrary to the almost uninterrupted tenor of Parliamentary usage on such occasions. It states that the mode of giving the opinions was unprecedented, and contrary to the

privileges of the House of Commons. It states that the Committee did not know upon what rules and principles the Judges had decided upon those cases, as they neither heard their opinions delivered, nor have found them entered upon the Journals of the House of Lords. It is very true that we were and are extremely dissatisfied with those opinions, and the consequent determinations of the Lords; and we do not think such a mode of proceeding at all justified by the most numerous and the best precedents. None of these sentiments is the Committee, as I conceive, (and I feel as little as any of them,) disposed to retract, or to soften in the smallest degree.

The Report speaks for itself. Whenever an occasion shall be regularly given to maintain everything of substance in that paper, I shall be ready to meet the proudest name for ability, learning, or rank that this kingdom contains, upon that subject. Do I say this from any confidence in myself? Far from it. It is from my confidence in our cause, and in the ability, the learning, and the constitutional principles which this House contains within itself, and which I hope it will ever contain, — and in the assistance which it will not fail to afford to those who with good intention do their best to maintain the essential privileges of the House, the ancient law of Parliament, and the public justice of this kingdom.

No reply or observation was made on the subject by any other member, nor was any farther notice taken of it in the House of Lords.

SPEECHES

IN

THE IMPEACHMENT

OF

WARREN HASTINGS, ESQUIRE,

LATE GOVERNOR-GENERAL OF BENGAL.

SPEECH IN GENERAL REPLY.

MAY AND JUNE, 1794.

SPEECH

IN

GENERAL REPLY.

FIRST DAY: WEDNESDAY, MAY 28, 1794.

MY LORDS, — This business, which has so long employed the public councils of this kingdom, so long employed the greatest and most august of its tribunals, now approaches to a close. The wreck and fragments of our cause (which has been dashed to pieces upon rules by which your Lordships have thought fit to regulate its progress) await your final determination. Enough, however, of the matter is left to call for the most exemplary punishment that any tribunal ever inflicted upon any criminal. And yet, my Lords, the prisoner, by the plan of his defence, demands not only an escape, but a triumph. It is not enough for him to be acquitted: the Commons of Great Britain must be condemned; and your Lordships must be the instruments of his glory and of our disgrace. This is the issue upon which he has put this cause, and the issue upon which we are obliged to take it now, and to provide for it hereafter.

My Lords, I confess that at this critical moment I feel myself oppressed with an anxiety that no words can adequately express. The effect of all our labors, the result of all our inquiries, is now to be ascertained. You, my Lords, are now to determine, not only whether all these labors have been vain and fruitless, but whether we have abused so long the

public patience of our country, and so long oppressed merit, instead of avenging crime. I confess I tremble, when I consider that your judgment is now going to be passed, not on the culprit at your bar, but upon the House of Commons itself, and upon the public justice of this kingdom, as represented in this great tribunal. It is not that culprit who is upon trial; it is the House of Commons that is upon its trial, it is the House of Lords that is upon its trial, it is the British nation that is upon its trial before all other nations, before the present generation, and before a long, long posterity.

My Lords, I should be ashamed, if at this moment I attempted to use any sort of rhetorical blandishments whatever. Such artifices would neither be suitable to the body that I represent, to the cause which I sustain, or to my own individual disposition, upon such an occasion. My Lords, we know very well what these fallacious blandishments too frequently are. We know that they are used to captivate the benevolence of the court, and to conciliate the affections of the tribunal rather to the person than to the cause. We know that they are used to stifle the remonstrances of conscience in the judge, and to reconcile it to the violation of his duty. We likewise know that they are too often used in great and important causes (and more particularly in causes like this) to reconcile the prosecutor to the powerful factions of a protected criminal, and to the injury of those who have suffered by his crimes, — thus inducing all parties to separate in a kind of good humor, as if they had nothing more than a verbal dispute to settle, or a slight quarrel over a table to compromise. All this may now be done at the expense of the persons

whose cause we pretend to espouse. We may all part, my Lords, with the most perfect complacency and entire good humor towards one another, while nations, whole suffering nations, are left to beat the empty air with cries of misery and anguish, and to cast forth to an offended heaven the imprecations of disappointment and despair.

One of the counsel for the prisoner (I think it was one who has comported himself in this cause with decency) has told your Lordships that we have come here on account of *some doubts* entertained in the House of Commons concerning the conduct of the prisoner at your bar, — that we shall be extremely delighted, when his defence and your Lordships' judgment shall have set him free, and shall have discovered to us our error, — that we shall then mutually congratulate one another, — and that the Commons, and the Managers who represent them here, will be the first to rejoice in so happy an event and so fortunate a discovery.

Far, far from the Commons of Great Britain be all manner of real vice; but ten thousand times further from them, as far as from pole to pole, be the whole tribe of false, spurious, affected, counterfeit, hypocritical virtues! These are the things which are ten times more at war with real virtue, these are the things which are ten times more at war with real duty, than any vice known by its name and distinguished by its proper character. My Lords, far from us, I will add, be that false and affected candor that is eternally in treaty with crime, — that half virtue, which, like the ambiguous animal that flies about in the twilight of a compromise between day and night, is to a just man's eye an odious and disgust-

ing thing! There is no middle point in which the Commons of Great Britain can meet tyranny and oppression. No, we never shall (nor can we conceive that we ever should) pass from this bar, without indignation, without rage and despair, if the House of Commons should, upon such a defence as has here been made against such a charge as they have produced, be foiled, baffled, and defeated. No, my Lords, we never could forget it; a long, lasting, deep, bitter memory of it would sink into our minds.

My Lords, the Commons of Great Britain have no doubt upon this subject. We came hither to call for justice, not to solve a problem; and if justice be denied us, the accused is not acquitted, but the tribunal is condemned.) We know that this man is guilty of all the crimes which he stands accused of by us. We have not come here to you, in the rash heat of a day, with that fervor which sometimes prevails in popular assemblies, and frequently misleads them. No: if we have been guilty of error in this cause, it is a deliberate error, the fruit of long, laborious inquiry, — an error founded on a procedure in Parliament before we came here, the most minute, the most circumstantial, and the most cautious that ever was instituted. Instead of coming, as we did in Lord Strafford's case, and in some others, voting the impeachment and bringing it up on the same day, this impeachment was voted from a general sense prevailing in the House of Mr. Hastings's criminality after an investigation begun in the year 1780, and which produced in 1782 a body of resolutions condemnatory of almost the whole of his conduct. Those resolutions were formed by the Lord Advocate of

Scotland, and carried in our House by the unanimous consent of all parties: I mean the then Lord Advocate of Scotland, — now one of his Majesty's principal Secretaries of State, and at the head of this very Indian department. Afterwards, when this defendant came home, in the year 1785, we reïnstituted our inquiry. We instituted it, as your Lordships and the world know, at his own request, made to us by his agent, then a member of our House. We entered into it at large; we deliberately moved for every paper which promised information on the subject. These papers were not only produced on the part of the prosecution, as is the case before grand juries, but the friends of the prisoner produced every document which they could produce for his justification. We called all the witnesses which could enlighten us in the cause, and the friends of the prisoner likewise called every witness that could possibly throw any light in his favor. After all these long deliberations, we referred the whole to a committee. When it had gone through that committee, and we thought it in a fit state to be digested into these charges, we referred the matter to another committee; and the result of that long examination and the labor of these committees is the impeachment now at your bar.

If, therefore, we are defeated here, we cannot plead for ourselves that we have done this from a sudden gust of passion, which sometimes agitates and sometimes misleads the most grave popular assemblies. No: it is either the fair result of twenty-two years' deliberation that we bring before you, or what the prisoner says is just and true, — that nothing but malice in the Commons of Great Britain could possibly produce such an accusation as the fruit of such

an inquiry. My Lords, we admit this statement, we are at issue upon this point; and we are now before your Lordships, who are to determine whether this man has abused his power in India for fourteen years, or whether the Commons has abused their power of inquiry, made a mock of their inquisitorial authority, and turned it to purposes of private malice and revenge. We are not come here to compromise matters; we do not admit [do admit?] that our fame, our honors, nay, the very inquisitorial power of the House of Commons is gone, if this man be not guilty.

My Lords, great and powerful as the House of Commons is, (and great and powerful I hope it always will remain,) yet we cannot be insensible to the effects produced by the introduction of forty millions of money into this country from India. We know that the private fortunes which have been made there pervade this kingdom so universally that there is not a single parish in it unoccupied by the partisans of the defendant. We should fear that the faction which he has thus formed by the oppression of the people of India would be too strong for the House of Commons itself, with all its power and reputation, did we not know that we have brought before you a cause which nothing can resist.

I shall now, my Lords, proceed to state what has been already done in this cause, and in what condition it now stands for your judgment.

An immense mass of criminality was digested by a committee of the House of Commons; but although this mass had been taken from another mass still greater, the House found it expedient to select twenty specific charges, which they afterwards directed

us, their Managers, to bring to your Lordships' bar. Whether that which has been brought forward on these occasions or that which was left behind be more highly criminal, I for one, as a person most concerned in this inquiry, do assure your Lordships that it is impossible for me to determine.

After we had brought forward this cause, (the greatest in extent that ever was tried before any human tribunal, to say nothing of the magnitude of its consequences,) we soon found, whatever the reasons might be, without at present blaming the prisoner, without blaming your Lordships, and far are we from imputing blame to ourselves, we soon found that this trial was likely to be protracted to an unusual length. The Managers of the Commons, feeling this, went up to their constituents to procure from them the means of reducing it within a compass fitter for their management and for your Lordships' judgment. Being furnished with this power, a second selection was made upon the principles of the first: not upon the idea that what we left could be less clearly sustained, but because we thought a selection should be made upon some juridical principle. With this impression on our minds, we reduced the whole cause to four great heads of guilt and criminality. Two of them, namely, Benares and the Begums, show the effects of his open violence and injustice; the other two expose the principles of pecuniary corruption upon which the prisoner proceeded: one of these displays his passive corruption in receiving bribes, and the other his active corruption, in which he has endeavored to defend his passive corruption by forming a most formidable faction both abroad and at home. There is hardly any one act of the prisoner's corrup-

tion in which there is not presumptive violence, nor any acts of his violence in which there are not presumptive proofs of corruption. These practices are so intimately blended with each other, that we thought the distribution which we have adopted would best bring before you the spirit and genius of his government; and we were convinced, that, if upon these four great heads of charge your Lordships should not find him guilty, nothing could be added to them which would persuade you so to do.

In this way and in this state the matter now comes before your Lordships. I need not tread over the ground which has been trod with such extraordinary abilities by my brother Managers, of whom I shall say nothing more than that the cause has been supported by abilities equal to it; and, my Lords, no abilities are beyond it. As to the part which I have sustained in this procedure, a sense of my own abilities, weighed with the importance of the cause, would have made me desirous of being left out of it; but I had a duty to perform which superseded every personal consideration, and that duty was obedience to the House of which I have the honor of being a member. This is all the apology I shall make. We are the Commons of Great Britain, and therefore cannot make apologies. I can make none for my obedience; they want none for their commands. They gave me this office, not from any confidence in my ability, but from a confidence in the abilities of those who were to assist me, and from a confidence in my zeal, — a quality, my Lords, which oftentimes supplies the want of great abilities.

In considering what relates to the prisoner and to his defence, I find the whole resolves itself into four

heads: first, his demeanor and his defence in general; secondly, the principles of his defence; thirdly, the means of that defence; and, fourthly, the testimonies which he brings forward to fortify those means, to support those principles, and to justify that demeanor.

As to his demeanor, my Lords, I will venture to say, that, if we fully examine the conduct of all prisoners brought before this high tribunal, from the time that the Duke of Suffolk appeared before it down to the time of the appearance of my Lord Macclesfield, if we fully examine the conduct of prisoners in every station of life, from my Lord Bacon down to the smugglers who were impeached in the reign of King William, I say, my Lords, that we shall not, in the whole history of Parliamentary trials, find anything similar to the demeanor of the prisoner at your bar. What could have encouraged that demeanor your Lordships will, when you reflect seriously upon this matter, consider. God forbid that the authority either of the prosecutor or of the judge should dishearten the prisoner so as to circumscribe the means or enervate the vigor of his defence! God forbid that such a thing should even appear to be desired by anybody in any British tribunal! But, my Lords, there is a behavior which broadly displays a want of sense, a want of feeling, a want of decorum, — a behavior which indicates an habitual depravity of mind, that has no sentiments of propriety, no feeling for the relations of life, no conformity to the circumstances of human affairs. This behavior does not indicate the spirit of injured innocence, but the audacity of hardened, habitual, shameless guilt, — affording legitimate grounds for inferring a very defective educa-

tion, very evil society, or very vicious habits of life. There is, my Lords, a nobleness in modesty, while insolence is always base and servile. A man who is under the accusation of his country is under a very great misfortune. His innocence, indeed, may at length shine out like the sun, yet for a moment it is under a cloud; his honor is in abeyance, his estimation is suspended, and he stands, as it were, a doubtful person in the eyes of all human society. In that situation, not a timid, not an abject, but undoubtedly a modest behavior, would become a person even of the most exalted dignity and of the firmest fortitude.

The Romans (who were a people that understood the decorum of life as well as we do) considered a person accused to stand in such a doubtful situation that from the moment of accusation he assumed either a mourning or some squalid garb, although, by the nature of their constitution, accusations were brought forward by one of their lowest magistrates. The spirit of that decent usage has continued from the time of the Romans till this very day. No man was ever brought before your Lordships that did not carry the outward as well as inward demeanor of modesty, of fear, of apprehension, of a sense of his situation, of a sense of our accusation, and a sense of your Lordships' dignity.

These, however, are but outward things; they are, as Hamlet says, "things which a man may play." But, my Lords, this prisoner has gone a great deal further than being merely deficient in decent humility. Instead of defending himself, he has, with a degree of insolence unparalleled in the history of pride and guilt, cast out a recriminatory accusation upon the House of Commons. Instead of considering

himself as a person already under the condemnation of his country, and uncertain whether or not that condemnation shall receive the sanction of your verdict, he ranks himself with the suffering heroes of antiquity. Joining with them, he accuses us, the representatives of his country, of the blackest ingratitude, of the basest motives, of the most abominable oppression, not only of an innocent, but of a most meritorious individual, who, in your and in our service, has sacrificed his health, his fortune, and even suffered his fame and character to be called in question from one end of the world to the other. This, I say, he charges upon the Commons of Great Britain; and he charges it before the Court of Peers of the same kingdom. Had I not heard this language from the prisoner, and afterwards from his counsel, I must confess I could hardly have believed that any man could so comport himself at your Lordships' bar.

After stating in his defence the wonderful things he did for us, he says,—"I maintained the wars which were of your formation, or that of others, *not of mine*. I won one member of the great Indian confederacy from it by an act of seasonable restitution; with another I maintained a secret intercourse, and converted him into a friend; a third I drew off by diversion and negotiation, and employed him as the instrument of peace. When *you* cried out for peace, and your cries were heard by those who were the objects of it, I resisted this and every other species of counteraction by rising in my demands, and accomplished a peace, and I hope an everlasting one, with one great state; and I at least afforded the efficient means by which a peace, if not so durable, more seasonable at least, was accomplished with another.

I gave you *all;* and you have rewarded me with *confiscation, disgrace, and a life of impeachment.*"

Comparing our conduct with that of the people of India, he says, — "*They* manifested a generosity of which we have no example in the European world. Their conduct was the effect of their sense of gratitude for the benefits they had received from my administration. I wish I could say as much of my own countrymen."

My Lords, here, then, we have the prisoner at your bar in his demeanor not defending himself, but recriminating upon his country, charging it with perfidy, ingratitude, and oppression, and making a comparison of it with the banians of India, whom he prefers to the Commons of Great Britain.

My Lords, what shall we say to this demeanor? With regard to the charge of using him with ingratitude, there are two points to be considered. First, the charge implies that he had rendered great services; and, secondly, that he has been falsely accused.

My Lords, as to the great services, they have not, they cannot, come in evidence before you. If you have received such evidence, you have received it obliquely; for there is no other direct proof before your Lordships of such services than that of there having been great distresses and great calamities in India during his government. Upon these distresses and calamities he has, indeed, attempted to justify obliquely the corruption that has been charged upon him; but you have not properly in issue these services. You cannot admit the evidence of any such services received directly from him, as a matter of recriminatory charge upon the House of Commons,

because you have not suffered that House to examine into the validity and merit of this plea. We have not been heard upon this recriminatory charge, which makes a considerable part of the demeanor of the prisoner; we cannot be heard upon it; and therefore I demand, on the part of the Commons of Great Britain, that it be dismissed from your consideration: and this I demand, whether you take it as an attempt to render odious the conduct of the Commons, whether you take it in mitigation of the punishment due to the prisoner for his crimes, or whether it be adduced as a presumption that so virtuous a servant never could be guilty of the offences with which we charge him. In whichever of these lights you may be inclined to consider this matter, I say you have it not in evidence before you; and therefore you must expunge it from your thoughts, and separate it entirely from your judgment. I shall hereafter have occasion to say a few words on this subject of *merits*. I have said thus much at present in order to remove extraneous impressions from your minds. For, admitting that your Lordships are the best judges, as I well know that you are, yet I cannot say that you are not men, and that matter of this kind, however irrelevant, may not make an impression upon you. It does, therefore, become us to take some occasional notice of these supposed services, not in the way of argument, but with a view by one sort of prejudice to destroy another prejudice. If there is anything in evidence which tends to destroy this plea of merits, we shall recur to that evidence; if there is nothing to destroy it but argument, we shall have recourse to that argument; and if we support that argument by authority and document not in your Lordships' min-

utes, I hope it will not be the less considered as good argument because it is so supported.

I must now call your Lordships' attention from the vaunted services of the prisoner, which have been urged to convict us of ingratitude, to another part of his recriminatory defence. He says, my Lords, that we have not only oppressed him with unjust charges, (which is a matter for your Lordships to judge, and is now the point at issue between us,) but that, instead of attacking him by fair judicial modes of proceeding, by stating crimes clearly and plainly, and by proving those crimes, and showing their necessary consequences, we have oppressed him with all sorts of foul and abusive language, — so much so, that every part of our proceeding has, in the eye of the world, more the appearance of private revenge than of public justice.

Against this impudent and calumnious recriminatory accusation, which your Lordships have thought good to suffer him to utter here, at a time, too, when all dignity is in danger of being trodden under foot, we will say nothing by way of defence. The Commons of Great Britain, my Lords, are a rustic people: a tone of rusticity is therefore the proper accent of their Managers. We are not acquainted with the urbanity and politeness of extortion and oppression; nor do we know anything of the sentimental delicacies of bribery and corruption. We speak the language of truth, and we speak it in the plain, simple terms in which truth ought to be spoken. Even if we have anything to answer for on this head, we can only answer to the body which we represent and to that body which hears us: to any others we owe no apology whatever.

The prisoner at your bar admits that the crimes

which we charge him with are of that atrocity, that, if brought home to him, he merits death. Yet, when, in pursuance of our duty, we come to state these crimes with their proper criminatory epithets, when we state in strong and direct terms the circumstances which heighten and aggravate them, when we dwell on the immoral and heinous nature of the acts, and the terrible effects which such acts produce, and when we offer to prove both the principal facts and the aggravatory ones by evidence, and to show their nature and quality by the rules of law, morality, and policy, then this criminal, then his counsel, then his accomplices and hirelings, posted in newspapers and dispersed in circles through every part of the kingdom, represent him as an object of great compassion, because he is treated, say they, with nothing but opprobrious names and scurrilous invectives.

To all this the Managers of the Commons will say nothing by way of defence: it would be to betray their trust, if they did. No, my Lords, they have another and a very different duty to perform on this occasion. They are bound not to suffer public opinion, which often prevents judgment and often defeats its effects, to be debauched and corrupted. Much less is this to be suffered in the presence of our coordinate branch of legislature, and as it were with your and our own tacit acquiescence. Whenever the public mind is misled, it becomes the duty of the Commons of Great Britain to give it a more proper tone and a juster way of thinking. When ignorance and corruption have usurped the professor's chair, and placed themselves in the seats of science and of virtue, it is high time for us to speak out. We know that the doctrines of folly are of great use to the profes-

sors of vice. We know that it is one of the signs of a corrupt and degenerate age, and one of the means of insuring its further corruption and degeneracy, to give mild and lenient epithets to vices and to crimes. The world is much influenced by names. And as terms are the representatives of sentiments, when persons who exercise any censorial magistracy seem in their language to compromise with crimes and criminals by expressing no horror of the one or detestation of the other, the world will naturally think that they act merely to acquit themselves in its sight in form, but in reality to evade their duty. Yes, my Lords, the world must think that such persons palter with their sacred trust, and are tender to crimes because they look forward to the future possession of the same power which they now prosecute, and purpose to abuse it in the manner it has been abused by the criminal of whom they are so tender.

To remove such an imputation from us, we assert that the Commons of Great Britain are not to receive instructions about the language which they ought to hold from the gentlemen who have made profitable studies in the academies of Benares and of Oude. We know, and therefore do not want to learn, how to comport ourselves in prosecuting the haughty and overgrown delinquents of the East. We cannot require to be instructed by them in what words we shall express just indignation at enormous crimes; for we have the example of our great ancestors to teach us: we tread in their steps, and we speak in their language.

Your Lordships well know, for you must be conversant in this kind of reading, that you once had before you a man of the highest rank in this country,

one of the greatest men of the law and one of the greatest men of the state, a peer of your own body, Lord Macclesfield. Yet, my Lords, when that peer did but just modestly hint that he had received hard measure from the Commons and their Managers, those Managers thought themselves bound *seriatim*, one after another, to express the utmost indignation at the charge, in the harshest language that could be used. Why did they do so? They knew it was the language that became them. They lived in an age in which politeness was as well understood and as much cultivated as it is at present; but they knew what they were doing, and they were resolved to use no language but what their ancestors had used, and to suffer no insolence which their ancestors would not have suffered. We tread in their steps; we pursue their method; we learn of them: and we shall never learn at any other school.

We know from history and the records of this House, that a Lord Bacon has been before you. Who is there, that, upon hearing this name, does not instantly recognize everything of genius the most profound, everything of literature the most extensive, everything of discovery the most penetrating, everything of observation on human life the most distinguishing and refined? All these must be instantly recognized, for they are all inseparably associated with the name of Lord Verulam. Yet, when this prodigy was brought before your Lordships by the Commons of Great Britain for having permitted his menial servant to receive presents, what was his demeanor? Did he require his counsel not "to let down the dignity of his defence"? No. That Lord Bacon, whose least distinction was, that he was a peer of

England, a Lord High Chancellor, and the son of a Lord Keeper, behaved like a man who knew himself, like a man who was conscious of merits of the highest kind, but who was at the same time conscious of having fallen into guilt. The House of Commons did not spare him. They brought him to your bar. They found spots in that sun. And what, I again ask, was his behavior? That of contrition, that of humility, that of repentance, that which belongs to the greatest men lapsed and fallen through human infirmity into error. He did not hurl defiance at the accusations of his country; he bowed himself before it. Yet, with all his penitence, he could not escape the pursuit of the House of Commons, and the inflexible justice of this Court. Your Lordships fined him forty thousand pounds, notwithstanding all his merits, notwithstanding his humility, notwithstanding his contrition, notwithstanding the decorum of his behavior, so well suited to a man under the prosecution of the Commons of England before the Peers of England. You fined him in a sum fully equal to one hundred thousand pounds of the present day; you imprisoned him during the King's pleasure; and you disqualified him forever from having a seat in this House and any office in this kingdom. This is the way in which the Commons behaved formerly, and in which your Lordships acted formerly, when no culprit at this bar dared to hurl a recriminatory accusation against his prosecutors, or dared to censure the language in which they expressed their indignation at his crimes

The Commons of Great Britain, following these examples and fortified by them, abhor all compromise with guilt either in act or in language. They

will not disclaim any one word that they have spoken, because, my Lords, they have said nothing abusive or illiberal. It has been said that we have used such language as was used to Sir Walter Raleigh, when he was called, not by the Commons, but by a certain person of a learned profession, "a spider of hell." My Lords, Sir Walter was a great soldier, a great mariner, and one of the first scholars of his age. To call him a spider of hell was not only indecent in itself, but perfectly foolish, from the term being totally inapplicable to the object, and fit only for the very pedantic eloquence of the person who used it. But if Sir Walter Raleigh had been guilty of numberless frauds and prevarications, if he had clandestinely picked up other men's money, concealed his peculation by false bonds, and afterwards attempted to cover it by the cobwebs of the law, then my Lord Coke would have trespassed a great deal more against decorum than against propriety of similitude and metaphor.

My Lords, the Managers for the Commons have not used any *inapplicable* language. We have indeed used, and will again use, such expressions as are proper to portray guilt. After describing the magnitude of the crime, we describe the magnitude of the criminal. We have declared him to be not only a public robber himself, but the head of a system of robbery, the captain-general of the gang, the chief under whom a whole predatory band was arrayed, disciplined, and paid. This, my Lords, is what we offered to prove fully to you, what in part we have proved, and the whole of which I believe we could prove. In developing such a mass of criminality and in describing a criminal of such magnitude as

we have now brought before you, we could not use lenient epithets without compromising with crime. We therefore shall not relax in our pursuits nor in our language. No, my Lords, no! we shall not fail to feel indignation, wherever our moral nature has taught us to feel it; nor shall we hesitate to speak the language which is dictated by that indignation. Whenever men are oppressed where they ought to be protected, we called [call?] it tyranny, and we call the actor a tyrant. Whenever goods are taken by violence from the possessor, we call it a robbery, and the person who takes it we call a robber. Money clandestinely taken from the proprietor we call theft, and the person who takes it we call a thief. When a false paper is made out to obtain money, we call the act a forgery. That steward who takes bribes from his master's tenants, and then, pretending the money to be his own, lends it to that master and takes bonds for it to himself, we consider guilty of a breach of trust; and the person who commits such crimes we call a cheat, a swindler, and a forger of bonds. All these offences, without the least softening, under all these names, we charge upon this man. We have so charged in our record, we have so charged in our speeches; and we are sorry that our language does not furnish terms of sufficient force and compass to mark the multitude, the magnitude, and the atrocity of his crimes.

How came it, then, that the Commons of Great Britain should be calumniated for the course which they have taken? Why should it ever have been supposed that we are actuated by revenge? I answer, There are two very sufficient causes: corruption and ignorance. The first disposes an innumera-

ble multitude of people to a fellow-feeling with the prisoner. Under the shadow of his crimes thousands of fortunes have been made; and therefore thousands of tongues are employed to justify the means by which these fortunes were made. When they cannot deny the facts, they attack the accusers, — they attack their conduct, they attack their persons, they attack their language, in every possible manner. I have said, my Lords, that ignorance is the other cause of this calumny by which the House of Commons is assailed. Ignorance produces a confusion of ideas concerning the decorum of life, by confounding the rules of private society with those of public function. To talk, as we here talk, to persons in a mixed company of men and women, would violate the law of such societies; because they meet for the sole purpose of social intercourse, and not for the exposure, the censure, the punishment of crimes: to all which things private societies are altogether incompetent. In them crimes can never be regularly stated, proved, or refuted. The law has therefore appointed special places for such inquiries; and if in any of those places we were to apply the emollient language of drawing-rooms to the exposure of great crimes, it would be as false and vicious in taste and in morals as to use the criminatory language of this hall in drawing and assembling rooms would be misplaced and ridiculous. Every one knows that in common society palliating names are given to vices. Adultery in a lady is called gallantry; the gentleman is commonly called a man of good fortune, sometimes in French and sometimes in English. But is this the tone which would become a person in a court of justice, calling these people to an account for that

horrible crime which destroys the basis of society? No, my Lords, this is not the tone of such proceedings. Your Lordships know that it is not; the Commons know that it is not; and because we have acted on that knowledge, and stigmatized crimes with becoming indignation, we are said to be actuated rather by revenge than justice.

If it should still be asked why we show sufficient acrimony to excite a suspicion of being in any manner influenced by malice or a desire of revenge, to this, my Lords, I answer, Because we would be thought to know our duty, and to have all the world know how resolutely we are resolved to perform it. The Commons of Great Britain are not disposed to quarrel with the Divine Wisdom and Goodness, which has moulded up revenge into the frame and constitution of man. He that has made us what we are has made us at once resentful and reasonable. Instinct tells a man that he ought to revenge an injury; reason tells him that he ought not to be a judge in his own cause. From that moment revenge passes from the private to the public hand; but in being transferred it is far from being extinguished. My Lords, it is transferred as a sacred trust to be exercised for the injured, in measure and proportion, by persons who, feeling as he feels, are in a temper to reason better than he can reason. Revenge is taken out of the hands of the original injured proprietor, lest it should be carried beyond the bounds of moderation and justice. But, my Lords, it is in its transfer exposed to a danger of an opposite description. The delegate of vengeance may not feel the wrong sufficiently: he may be cold and languid in the performance of his sacred duty. It is for

these reasons that good men are taught to tremble even at the first emotions of anger and resentment for their own particular wrongs; but they are likewise taught, if they are well taught, to give the loosest possible rein to their resentment and indignation, whenever their parents, their friends, their country, or their brethren of the common family of mankind are injured. Those who have not such feelings, under such circumstances, are base and degenerate. These, my Lords, are the sentiments of the Commons of Great Britain.

Lord Bacon has very well said, that "revenge is a kind of wild justice." It is so, and without this wild austere stock there would be no justice in the world. But when, by the skilful hand of morality and wise jurisprudence, a foreign scion, but of the very same species, is grafted upon it, its harsh quality becomes changed, it submits to culture, and, laying aside its savage nature, it bears fruits and flowers, sweet to the world, and not ungrateful even to heaven itself, to which it elevates its exalted head. The fruit of this wild stock is revenge regulated, but not extinguished, — revenge transferred from the suffering party to the communion and sympathy of mankind. This is the revenge by which we are actuated, and which we should be sorry, if the false, idle, girlish, novel-like morality of the world should extinguish in the breast of us who have a great public duty to perform.

This sympathetic revenge, which is condemned by clamorous imbecility, is so far from being a vice, that it is the greatest of all possible virtues, — a virtue which the uncorrupted judgment of mankind has in all ages exalted to the rank of heroism. To give up all the repose and pleasures of life, to pass sleepless

nights and laborious days, and, what is ten times more irksome to an ingenuous mind, to offer oneself to calumny and all its herd of hissing tongues and poisoned fangs, in order to free the world from fraudulent prevaricators, from cruel oppressors, from robbers and tyrants, has, I say, the test of heroic virtue, and well deserves such a distinction. The Commons, despairing to attain the heights of this virtue, never lose sight of it for a moment. For seventeen years they have, almost without intermission, pursued, by every sort of inquiry, by legislative and by judicial remedy, the cure of this Indian malady, worse ten thousand times than the leprosy which our forefathers brought from the East. Could they have done this, if they had not been actuated by some strong, some vehement, some perennial passion, which, burning like the Vestal fire, chaste and eternal, never suffers generous sympathy to grow cold in maintaining the rights of the injured or in denouncing the crimes of the oppressor?

My Lords, the Managers for the Commons have been actuated by this passion; my Lords, they feel its influence at this moment; and so far from softening either their measures or their tone, they do here, in the presence of their Creator, of this House, and of the world, make this solemn declaration, and nuncupate this deliberate vow: that they will ever glow with the most determined and unextinguishable animosity against tyranny, oppression, and peculation in all, but more particularly as practised by this man in India; that they never will relent, but will pursue and prosecute him and it, till they see corrupt pride prostrate under the feet of justice. We call upon your Lordships to join us; and we have no doubt that

you will feel the same sympathy that we feel, or (what I cannot persuade my soul to think or my mouth to utter) you will be identified with the criminal whose crimes you excuse, and rolled with him in all the pollution of Indian guilt, from generation to generation. Let those who feel with me upon this occasion join with me in this vow: if they will not, I have it all to myself.

It is not to defend ourselves that I have addressed your Lordships at such length on this subject. No, my Lords, I have said what I considered necessary to instruct the public upon the principles which induced the House of Commons to persevere in this business with a generous warmth, and in the indignant language which Nature prompts, when great crimes are brought before men who feel as they ought to feel upon such occasions.

I now proceed, my Lords, to the next recriminatory charge, which is *delay*. I confess I am not astonished at this charge. From the first records of human impatience down to the present time, it has been complained that the march of violence and oppression is rapid, but that the progress of remedial and vindictive justice, even the divine, has almost always favored the appearance of being languid and sluggish. Something of this is owing to the very nature and constitution of human affairs; because, as justice is a circumspect, cautious, scrutinizing, balancing principle, full of doubt even of itself, and fearful of doing wrong even to the greatest wrong-doers, in the nature of things its movements must be slow in comparison with the headlong rapidity with which avarice, ambition, and revenge pounce down upon the devoted prey

of those violent and destructive passions. And indeed, my Lords, the disproportion between crime and justice, when seen in the particular acts of either, would be so much to the advantage of crimes and criminals, that we should find it difficult to defend laws and tribunals, (especially in great and arduous cases like this,) if we did not look, not to the *immediate*, not to the *retrospective*, but to the *provident* operation of justice. Its chief operation is in its future example; and this turns the balance, upon the total effect, in favor of vindictive justice, and in some measure reconciles a pious and humble mind to this great mysterious dispensation of the world.

Upon the charge of delay in this particular cause, my Lords, I have only to say that the business before you is of immense magnitude. The prisoner himself says that all the acts of his life are committed in it. With a due sense of this magnitude, we know that the investigation could not be short to us, nor short to your Lordships; but when we are called upon, as we have been daily, to sympathize with the prisoner in that delay, my Lords, we must tell you that we have no sympathy with him. Rejecting, as we have done, all false, spurious, and hypocritical virtues, we should hold it to be the greatest of all crimes to bestow upon the oppressors that pity which belongs to the oppressed. The unhappy persons who are wronged, robbed, and despoiled have no remedy but in the sympathies of mankind; and when these sympathies are suffered to be debauched, when they are perversely carried from the victim to the oppressor, then we commit a robbery still greater than that which was committed by the criminal accused.

My Lords, we do think this process long; we lament

it in every sense in which it ought to be lamented; but we lament still more that the Begums have been so long without having a just punishment inflicted upon their spoiler. We lament that Cheyt Sing has so long been a wanderer, while the man who drove him from his dominions is still unpunished. We are sorry that Nobkissin has been cheated of his money for fourteen years, without obtaining redress. These are our sympathies, my Lords; and thus we reply to this part of the charge.

My Lords, there are some matters of fact in this charge of delay which I must beg your Lordships will look into. On the 19th of February, 1789, the prisoner presented a petition to your Lordships, in which he states, after many other complaints, that a great number of his witnesses were obliged to go to India, by which he has lost the benefit of their testimony, and that a great number of your Lordships' body were dead, by which he has lost the benefit of their judgment. As to the hand of God, though some members of your House may have departed this life since the commencement of this trial, yet the body always remains entire. The evidence before you is the same; and therefore there is no reason to presume that your final judgment will be affected by these afflicting dispensations of Providence. With regard to his witnesses, I must beg to remind your Lordships of one extraordinary fact. This prisoner has sent to India, and obtained, not testimonies, but testimonials to his general good behavior. He has never once applied, by commission or otherwise, to falsify any one fact that is charged upon him, — no, my Lords, not one. Therefore that part of his petition which states the injury he has received from the Commons

of Great Britain is totally false and groundless. For if he had any witnesses to examine, he would not have failed to examine them; if he had asked for a commission to receive their depositions, a commission would have been granted; if, without a commission, he had brought affidavits to facts, or regular recorded testimony, the Commons of Great Britain would never have rejected such evidence, even though they could not have cross-examined it.

Another complaint is, that many of his witnesses were obliged to leave England before he could make use of their evidence. My Lords, no delay in the trial has prevented him from producing any evidence; for we were willing that any of his witnesses should be examined at any time most convenient to himself. If many persons connected with his measures are gone to India, during the course of his trial, many others have returned to England. Mr. Larkins returned. Was the prisoner willing to examine him? No: and it was nothing but downright shame, and the presumptions which he knew would be drawn against him, if he did not call this witness, which finally induced him to make use of his evidence. We examined Mr. Larkins, my Lords; we examined all the prisoner's witnesses; your Lordships have their testimony; and down to this very hour he has not put his hand upon any one whom he thought a proper and essential witness to the facts, or to any part of the cause, whose examination has been denied him; nor has he even stated that any man, if brought here, would prove such and such points. No, not one word to this effect has ever been stated by the prisoner.

There is, my Lords, another case, which was noticed by my honorable fellow Manager yesterday. Mr.

Belli, the confidential secretary of the prisoner, was agent and contractor for stores; and this raised a suspicion that the contracts were held by him for the prisoner's advantage. Mr. Belli was here during the whole time of the trial, and six weeks after we had closed our evidence. We had then no longer the arrangement of the order of witnesses, and he might have called whom he pleased. With the full knowledge of these circumstances, that witness did he suffer to depart for India, if he did not even encourage his departure. This, my Lords, is the kind of damage which he has suffered by the want of witnesses, through the protraction of this trial.

But the great and serious evil which he complains of, as being occasioned by our delay, is of so extraordinary a nature that I must request your Lordships to examine it with extraordinary strictness and attention. In the petition before your Lordships, the prisoner asserts that he was under the necessity, through his counsel and solicitors, "of collecting and collating from the voluminous records of the Company the whole history of his public life, in order to form a complete defence to every allegation which the Honorable House of Commons had preferred against him, and that he has expended upwards of thirty thousand pounds in preparing the materials of his defence."

It is evident, my Lords, that the expenditure of this thirty thousand pounds is not properly connected with the delay of which he complains; for he states that he had incurred this loss merely in collecting and collating materials, previous to his defence before your Lordships. If this were true, and your Lordships were to admit the amount as a rule and estimate by which the aggregate of his loss could be ascertained,

the application of the rule of three to the sum and time given would bring out an enormous expenditure in the long period which has elapsed since the commencement of the trial, — so enormous, that, if this monstrous load of oppression has been laid upon him by the delay of the Commons, I believe no man living can stand up in our justification. But, my Lords, I am to tell your Lordships some facts, into which we trust *you* will inquire: for this business is not in our hands, nor can we lay it as a charge before you Your own Journals have recorded the document, in which the prisoner complains bitterly of the House of Commons, and indeed of the whole judicature of the country, — a complaint which your Lordships will do well to examine.

When we first came to a knowledge of this petition, which was not till some time after it was presented, I happened to have conversation with a noble lord, — I know not whether he be in his place in the House or not, but I think I am not irregular in mentioning his name. When I mention Lord Suffolk, I name a peer whom honor, justice, veracity, and every virtue that distinguishes the man and the peer would claim for their own. My Lord Suffolk told me, that, in a conversation with the late Lord Dover, who brought the prisoner's petition into your House, he could not refrain from expressing his astonishment at that part of the petition which related to the expense Mr. Hastings had been at; and particularly as a complaint had been made in the House of the enormous expense of the prosecution, which at that time had only amounted to fourteen thousand pounds, although the expense of the prosecutor is generally greater than that of the defendant, and public pro-

ceedings more expensive than private ones. Lord Dover said, that, before he presented the petition, he had felt exactly in the same manner; but that Mr. Hastings assured him that six thousand pounds had been paid to copying clerks in the India House, and that from this circumstance he might judge of the other expenses. Lord Dover was satisfied with this assurance, and presented the petition, which otherwise he should have declined to do, on account of the apparent enormity of the allegation it contained. At the time when Lord Suffolk informed me of these particulars, (with a good deal of surprise and astonishment,) I had not leisure to go down to the India House in order to make inquiries concerning them, but I afterwards asked the Secretary, Mr. Hudson, to whom *we* had given a handsome reward, what sums he had received from Mr. Hastings for his services upon this occasion, and the answer was, "Not one shilling." Not one shilling had Mr. Hudson received from Mr. Hastings. The clerks of the Company informed us that the Court of Directors had ordered that every paper which Mr. Hastings wanted should be copied for him gratuitously, — and that, if any additional clerks were wanting for the effectual execution of his wishes, the expense would be defrayed by the Directors. Hearing this account, I next inquired what *expedition money* might have been given to the clerks: for we know something of this kind is usually done. In reply to this question, Mr. Hudson told me that at various times they had received in little driblets to the amount of ninety-five pounds, or thereabouts. In this way the account stood when I made this inquiry, which was at least half a year after the petition had been presented to

your Lordships. Thus the whole story of the six thousand pounds was absolutely false. At that time there was not one word of truth in it, whatever be the amount of the sums which he has paid since. Your Lordships will now judge whether you have been abused by false allegations or not, — allegations which could scarcely admit of being true, and which upon the best inquiry I found absolutely false; and I appeal to the testimony of the noble lord, who is now living, for the truth of the account he received from the worthy and respectable peer whose loss the nation has to bewail.

There are many other circumstances of fraud and falsehood attending this petition, (we must call things by their proper names, my Lords,) — there are, I say, many circumstances of fraud and falsehood. We know it to have been impossible, at the time of presenting this petition, that this man should have expended thirty thousand pounds in the preparation of materials for his defence; and your Lordships' justice, together with the credit of the House of Commons, are concerned in the discovery of the truth. There is, indeed, an ambiguous word in the petition. He asserts that he is *engaged* for the payment of that sum. We asked the clerks of the India House whether he had given them any bond, note, security, or promise of payment: they assured us that he had not: they will be ready to make the same assurance to your Lordships, when you come to inquire into this matter, which before you give judgment we desire and claim that you will do. All is concealment and mystery on the side of the prisoner; all is open and direct with us. We are desirous that everything which is concealed may be brought to light.

In contradiction, then, to this charge of oppression and of an attempt to ruin his fortune, your Lordships will see that at the time when he made this charge he had not been, in fact, nor was for a long time after, one shilling out of pocket. 'But some other person had become security to his attorney for him. What, then, are we to think of these men of business, of these friends of Mr. Hastings, who, when he is possessed of nothing, are contented to become responsible for thirty thousand pounds, (was it thirty thousand pounds out of the bullock contracts?) — responsible, I say, for this sum, in order to maintain this suit previous to its actual commencement, and who consequently must be so engaged for every article of expense that has followed from that time to this?

Thus much we have thought it necessary to say upon this part of the recriminatory charge of delay. With respect to the delay in general, we are at present under an account to our constituents upon that subject. To them we shall give it. We shall not give any further account of it to your Lordships. The means belong to us as well as to you of removing these charges. Your Lordships may inquire upon oath, as we have done in our committee, into all the circumstances of these allegations. I hope your Lordships will do so, and will give the Commons an opportunity of attending and assisting at this most momentous and important inquiry.

The next recriminatory charge made upon us by the prisoner is, that, merely to throw an odium upon him, we have brought forward a great deal of irrelevant matter, which could not be proved regularly in the course of examination at your bar, and particu-

larly in the opening speech, which I had the honor of making on the subject.

Your Lordships know very well that we stated in our charge that great abuses had prevailed in India, that the Company had entered into covenants with their servants respecting those abuses, that an act of Parliament was made to prevent their recurrence, and that Mr. Hastings still continued in their practice. Now, my Lords, having stated this, nothing could be more regular, more proper, and more pertinent, than for us to justify both the covenants required by the Company and the act made to prevent the abuses which existed in India. We therefore went through those abuses; we stated them, and were ready to prove every material word and article in them. Whether they were personally relevant or irrelevant to the prisoner we cared nothing. We were to make out from the records of the House (which records I can produce, whenever I am called upon for them) all these articles of abuse and grievance; and we have stated these abuses as the grounds of the Company's provisional covenants with its servants, and of the act of Parliament. We have stated them under two heads, violence and corruption: for these crimes will be found, my Lords, in almost every transaction with the native powers; and the prisoner is directly or indirectly involved in every part of them. If it be still objected, that these crimes are irrelevant to the charge, we answer, that we did not introduce them as matter of charge. We say they were not irrelevant to the proof of the preamble of our charge, which preamble is perfectly relevant in all its parts. That the matters stated in it are perfectly true we vouch the House of Com-

mons, we vouch the very persons themselves who were concerned in the transactions. When Arabic authors are quoted, and Oriental tales told about *flashes of lightning* and *three seals*, we quote the very parties themselves giving this account of their own conduct to a committee of the House of Commons.

Your Lordships will remember that a most reverend prelate, who cannot be named without every mark of respect and attention, conveyed a petition to your Lordships from a gentleman concerned in one of those narratives. Upon your Lordships' table that petition still lies. For the production of this narrative we are not answerable to this House; your Lordships could not make us answerable to him; but we are answerable to our own House, we are answerable to our own honor, we are answerable to all the Commons of Great Britain for whatever we have asserted in their name. Accordingly, General Burgoyne, then a member of this Committee of Managers, and myself, went down into the House of Commons; we there restated the whole affair; we desired that an inquiry should be made into it, at the request of the parties concerned. But, my Lords, they have never asked for inquiry from that day to this. Whenever he or they who are criminated (not by us, but in this volume of Reports that is in my hand) desire it, the House will give them all possible satisfaction upon the subject.

A similar complaint was made to the House of Commons by the prisoner, that matters irrelevant to the charge were brought up hither. Was it not open to him, and has he had no friends in the House of Commons, to call upon the House, during the whole period of this proceeding, to examine into the

particulars adduced in justification of the preamble of the charge against him, in justification of the covenants of the Company, in justification of the act of Parliament? It was in his power to do it; it is in his power still; and if it be brought before that tribunal, to which I and my fellow Managers are alone accountable, we will lay before that tribunal such matters as will sufficiently justify our mode of proceeding, and the resolution of the House of Commons. I will not, therefore, enter into the particulars (because they cannot be entered into by your Lordships) any further than to say, that, if we had ever been called upon to prove the allegations which we have made, not in the nature of a charge, but as bound in duty to this Court, and in justice to ourselves, we should have been ready to enter into proof. We offered to do so, and we now repeat the offer.

There was another complaint in the prisoner's petition, which did not apply to the words of the preamble, but to an allegation in the charge concerning abuses in the revenue, and the ill consequences which arose from them. I allude to those shocking transactions, which nobody can mention without horror, in Rampore and Dinagepore, during the government of Mr. Hastings, and which we attempted to bring home to him. What did he do in this case? Did he endeavor to meet these charges fairly, as he might have done? No, my Lords: what he said merely amounted to this: — "Examination into these charges would vindicate my reputation before the world; but I, who am the guardian of my own honor and my own interests, choose to avail myself of the rules

and orders of this House, and I will not suffer you to enter upon that examination."

My Lords, we admit, you are the interpreters of your own rules and orders. We likewise admit that our own honor may be affected by the character of the evidence which we produce to you. But, my Lords, they who withhold their defence, who suffer themselves, as they say, to be cruelly criminated by unjust accusation, and yet will not permit the evidence of their guilt or innocence to be produced, are themselves the causes of the irrelevancy of all these matters. It cannot justly be charged on us; for we have never offered any matter here which we did not declare our readiness upon the spot to prove. Your Lordships did not think fit to receive that proof. We do not now censure your Lordships for your determination: that is not the business of this day. We refer to your determination for the purpose of showing the falsehood of the imputation which the prisoner has cast upon us, of having oppressed him by delay and irrelevant matter. We refer to it in order to show that the oppression rests with himself, that it is all his own.

Well, but Mr. Hastings complained also to the House of Commons. Has he pursued the complaint? No, he has not; and yet this prisoner, and these gentlemen, his learned counsel, have dared to reiterate their complaints of us at your Lordships' bar, while we have always been, and still are, ready to prove both the atrocious nature of the facts, and that they are *referable* to the prisoner at your bar. To this, as I have said before, the prisoner has objected; this we are not permitted to do by your Lordships: and therefore, without presuming to blame your de-

termination, I repeat, that we throw the blame directly upon himself, when he complains that his private character suffers without the means of defence, since he objects to the use of means of defence which are at his disposal.

Having gone through this part of the prisoner's recriminatory charge, I shall close my observations on his demeanor, and defer my remarks on his complaint of our ingratitude until we come to consider his set-off of services.

The next subject for your Lordships' consideration is the principle of the prisoner's defence. And here we must observe, that, either by confession or conviction, we are possessed of the facts, and perfectly agreed upon the matter at issue between us. In taking a view of the laws by which you are to judge, I shall beg leave to state to you upon what principles of law the House of Commons has criminated him, and upon what principles of law, or pretended law, he justifies himself: for these are the matters at issue between us; the matters of fact, as I have just said, being determined either by confession on his part or by proof on ours.

My Lords, we acknowledge that Mr. Hastings was invested with discretionary power; but we assert that he was bound to use that power according to the established rules of political morality, humanity, and equity. In all questions relating to foreign powers he was bound to act under the Law of Nature and under the Law of Nations, as it is recognized by the wisest authorities in public jurisprudence; in his relation to this country he was bound to act according to the laws and statutes of Great Britain, either

in their letter or in their spirit; and we affirm, that in his relation to the people of India he was bound to act according to the largest and most liberal construction of their laws, rights, usages, institutions, and good customs; and we furthermore assert, that he was under an express obligation to yield implicit obedience to the Court of Directors. It is upon these rules and principles the Commons contend that Mr. Hastings ought to have regulated his government; and not only Mr. Hastings, but all other governors. It is upon these rules that he is responsible; and upon these rules, and these rules only, your Lordships are to judge.

My Lords, long before the Committee had resolved upon this impeachment, we had come, as I have told your Lordships, to forty-five resolutions, every one criminatory of this man, every one of them bottomed upon the principles which I have stated. We never will nor can we abandon them; and we therefore do not supplicate your Lordships upon this head, but claim and demand of right, that you will judge him upon those principles, and upon no other. If once they are evaded, you can have no rule for your judgment but your caprices and partialities.

Having thus stated the principles upon which the Commons hold him and all governors responsible, and upon which we have grounded our impeachment, and which must be the grounds of your judgment, (and your Lordships will not suffer any other ground to be mentioned to you,) we will now tell you what are the grounds of his defence.

He first asserts, that he was possessed of an arbitrary and despotic power, restrained by no laws but his own will. He next says, that "the rights of the

people he governed in India are nothing, and that the rights of the government are everything." The people, he asserts, have no liberty, no laws, no inheritance, no fixed property, no descendable estate, no subordinations in society, no sense of honor or of shame, and that they are only affected by punishment so far as punishment is a corporal infliction, being totally insensible of any difference between the punishment of man and beast. These are the principles of his Indian government, which Mr. Hastings has avowed in their full extent. Whenever precedents are required, he cites and follows the example of avowed tyrants, of Aliverdy Khân, Cossim Ali Khân, and Sujah Dowlah. With an avowal of these principles he was pleased first to entertain the House of Commons, the *active* assertors and conservators of the rights, liberties, and laws of his country; and then to insist upon them more largely and in a fuller detail before this awful tribunal, the *passive* judicial conservator of the same great interests. He has brought out these blasphemous doctrines in this great temple of justice, consecrated to law and equity for a long series of ages. He has brought them forth in Westminster Hall, in presence of all the Judges of the land, who are to execute the law, and of the House of Lords, who are bound as its guardians not to suffer the words "arbitrary power" to be mentioned before them. For I am not again to tell your Lordships, that arbitrary power is treason in the law, — that to mention it with law is to commit a contradiction in terms. They cannot exist in concert; they cannot hold together for a moment.

Let us now hear what the prisoner says. "The sovereignty which they [the subahdars, or viceroys

of the Mogul empire] assumed, it fell to my lot, very unexpectedly, to exert; and whether or not such power, or powers of that nature, were delegated to me by any provisions of any act of Parliament I confess myself too little of a lawyer to pronounce. I only know that the acceptance of the sovereignty of Benares, &c., is not acknowledged or admitted by any act of Parliament; and yet, by the particular interference of the majority of the Council, the Company is clearly and indisputably seized of that sovereignty. If, therefore, the *sovereignty* of Benares, as ceded to us by the Vizier, have *any rights whatever* annexed to it, and be not a mere empty word without meaning, those rights must be such as are held, countenanced, and established by the law, custom, and usage of the Mogul empire, and not by the provisions of any British act of Parliament hitherto enacted. *Those rights*, and none other, I have been the involuntary instrument of enforcing. And if any future act of Parliament shall positively or by implication tend to annihilate those very rights, or their exertion, as I have exerted them, I much fear that the boasted sovereignty of Benares, which was held up as an acquisition almost obtruded on the Company against my consent and opinion, (for I acknowledge that even then I foresaw many difficulties and inconveniences in its future exercise,) — I fear, I say, that this sovereignty will be found a burden instead of a benefit, a heavy clog rather than a precious gem to its present possessors: I mean, unless the whole of our territory in that quarter shall be rounded and made an uniform compact body by one grand and systematic arrangement, — such an arrangement as shall do away all the mischiefs, doubts, and inconveniences (both to the gov-

ernors and the governed) arising from the variety of tenures, rights, and claims in all cases of landed property and feudal jurisdiction in India, from the informality, invalidity, and instability of all engagements in so divided and unsettled a state of society, and from the unavoidable anarchy and confusion of different laws, religions, and prejudices, moral, civil, and political, all jumbled together in one unnatural and discordant mass. Every part of Hindostan has been constantly exposed to these and similar disadvantages ever since the Mahometan conquests. The Hindoos, who never incorporated with their conquerors, were kept in order only by the strong hand of power. The constant necessity of similar exertions would increase at once their energy and extent. So that rebellion itself is the parent and promoter of *despotism*. Sovereignty in India implies nothing else. For I know not how we can form an estimate of its powers, but from its visible effects; and those are everywhere the same from Cabool to Assam. The whole history of Asia is nothing more than precedents to prove the invariable exercise of arbitrary power. To all this I strongly alluded in the minutes I delivered in Council, when the treaty with the new Vizier was on foot in 1775; and I wished to make Cheyt Sing independent, because in India dependence included a thousand evils, many of which I enumerated at that time, and they are entered in the ninth clause of the first section of this charge. I knew the powers with which an Indian sovereignty is armed, and the dangers to which tributaries are exposed. I knew, that, from the history of Asia, and from the very nature of mankind, the subjects of a despotic empire are always vigilant for the moment to rebel, and the sovereign is

ever jealous of rebellious intentions. A zemindar is an Indian subject, and as such exposed to the common lot of his fellows. *The mean and depraved state of a mere zemindar* is therefore this very dependence above mentioned on a despotic government, this very proneness to shake off his allegiance, and this very exposure to continual danger from his sovereign's jealousy, which are consequent on the political state of Hindostanic governments. Bulwant Sing, if he had been, and Cheyt Sing, as long as he was, a zemindar, stood exactly in this *mean and depraved state* by the constitution of his country. I did not make it for him, but would have secured him from it. Those who made him a zemindar entailed upon him the consequences of so mean and depraved a tenure. Aliverdy Khân and Cossim Ali fined all their zemindars on the necessities of war, and on every pretence either of court necessity or court extravagance."

I beseech your Lordships seriously to look upon the whole nature of the principles upon which the prisoner defends himself. He appeals to the custom and usage of the Mogul empire; and the constitution of that empire is, he says, arbitrary power. He says, that he does not know whether any act of Parliament bound him not to exercise this arbitrary power, and that, if any such act should in future be made, it would be mischievous and ruinous to our empire in India. Thus he has at once repealed all preceding acts, he has annulled by prospect every future act you can make; and it is not in the power of the Parliament of Great Britain, without ruining the empire, to hinder his exercising this despotic authority. All Asia is by him disfranchised at a stroke. Its inhabitants have no rights, no laws, no

liberties; their state is mean and depraved; they may be fined for any purpose of court extravagance or prodigality, — or as Cheyt Sing was fined by him, not only upon every war, but upon every pretence of war.

This is the account he gives of his power, and of the people subject to the British government in India. We deny that the act of Parliament gave him any such power; we deny that the India Company gave him any such power, or that they had ever any such power to give; we even deny that there exists in all the human race a power to make the government of any state dependent upon individual will. We disclaim, we reject all such doctrines with disdain and indignation; and we have brought them up to your Lordships to be tried at your bar.

What must be the condition of the people of India, governed, as they have been, by persons who maintain these principles as maxims of government, and not as occasional deviations caused by the irregular will of man, — principles by which the whole system of society is to be controlled, not by law, reason, or justice, but by the will of one man?

Your Lordships will remark, that not only the whole of the laws, rights, and usages, but the very being of the people, are exposed to ruin: for Mr. Hastings says, that the people may be fined, that they may be exiled, that they may be imprisoned, and that even their lives are dependent upon the mere will of their foreign master; and that he, the Company's Governor, exercised that will under the authority of this country. Remark, my Lords, his application of this doctrine. "I would," he says, "have kept Cheyt Sing from the consequences of this dependence, by making him independent, and not in

any manner subjecting him to our government. The moment he came into a state of dependence upon the British government, all these evils attached upon him. — It is," he adds, " disagreeable to me to exert such powers; but I know they must be exerted; and I declare there is no security from this arbitrary power, but by having nothing to do with the British government."

My Lords, the House of Commons has already well considered what may be our future moral and political condition, when the persons who come from that school of pride, insolence, corruption, and tyranny are more intimately mixed up with us of purer morals. Nothing but contamination can be the result, nothing but corruption can exist in this country, unless we expunge this doctrine out of the very hearts and souls of the people. It is not to the gang of plunderers and robbers of which I say this man is at the head, that we are only, or indeed principally, to look. Every man in Great Britain will be contaminated and must be corrupted, if you let loose among us whole legions of men, generation after generation, tainted with these abominable vices, and avowing these detestable principles. It is, therefore, to preserve the integrity and honor of the Commons of Great Britain that we have brought this man to your Lordships' bar.

When these matters were first explained to your Lordships, and strongly enforced by abilities greater than I can exert, there was something like compunction shown by the prisoner: but he took the most strange mode to cover his guilt. Upon the cross-examination of Major Scott, he discovered all the engines of this Indian corruption. Mr. Hastings got

that witness to swear that this defence of his, from which the passages I have read to your Lordships are extracted, was not his, but that it was the work of his whole Council, composed of Mr. Middleton, Mr. Shore, Mr. Halhed, Mr. Baber, — the whole body of his Indian Cabinet Council; that this was their work, and not his; and that he disclaimed it, and therefore that it would be wrong to press it upon him. Good God! my Lords, what shall we say in this stage of the business? The prisoner put in an elaborate defence: he now disclaims that defence. He told us that it was of his own writing, that he had been able to compose it in five days; and he now gets five persons to contradict his own assertions, and to disprove on oath his most solemn declarations.

My Lords, this business appears still more alarming, when we find not only Mr. Hastings, but his whole Council, engaged in it. I pray your Lordships to observe, that Mr. Halhed, a person concerned with Mr. Hastings in compiling a code of Gentoo laws, is now found to be one of the persons to whom this very defence is attributed which contains such detestable and abominable doctrines. But are we to consider the contents of this paper as the defence of the prisoner or not? Will any one say, that, when an answer is sworn to in Chancery, when an answer is given here to an impeachment of the Commons, or when a plea is made to an indictment, that it is drawn by the defendant's counsel, and therefore is not his? Did we not all hear him read this defence in part at our bar? — did we not see him hand it to his secretary to have it read by his son? — did he not then hear it read from end to end? — did not he himself desire it to be printed, (for it was no

act of ours,) and did he not superintend and revise the press? — and has any breath but his own breathed upon it? No, my Lords, the whole composition is his, by writing or adoption; and never, till he found it pressed him in this House, never, till your Lordships began to entertain the same abhorrence of it that we did, did he disclaim it.

But mark another stage of the propagation of these horrible principles. After having grounded upon them the defence of his conduct against our charge, and after he had got a person to forswear them for him, and to prove him to have told falsehoods of the grossest kind to the House of Commons, he again adheres to this defence. The dog returned to his vomit. After having vomited out his vile, bilious stuff of arbitrary power, and afterwards denied it to be his, he gets his counsel in this place to resort to the loathsome mess again. They have thought proper, my Lords, to enter into an extended series of quotations from books of travellers, for the purpose of showing that despotism was the only principle of government acknowledged in India, — that the people have no laws, no rights, no property movable or immovable, no distinction of ranks, nor any sense of disgrace. After citing a long line of travellers to this effect, they quote Montesquieu as asserting the same facts, declaring that the people of India had no sense of honor, and were only sensible of the whip as far as it produced corporal pain. They then proceed to state that it was a government of misrule, productive of no happiness to the people, and that it so continued until subverted by the free government of Britain, — namely, the government that Mr. Hastings describes as having himself exercised there.

My Lords, if the prisoner can succeed in persuading us that these people have no laws, no rights, not even the common sentiments and feeling of men, he hopes your interest in them will be considerably lessened. He would persuade you that their sufferings are much assuaged by their being nothing new, — and that, having no right to property, to liberty, to honor, or to life, they must be more pleased with the little that is left to them than grieved for the much that has been ravished from them by his cruelty and his avarice. This inference makes it very necessary for me, before I proceed further, to make a few remarks upon this part of the prisoner's conduct, which your Lordships must have already felt with astonishment, perhaps with indignation. This man, who passed twenty-five years in India, who was fourteen years at the head of his government, master of all the offices, master of all the registers and records, master of all the lawyers and priests of all this empire, from the highest to the lowest, instead of producing to you the fruits of so many years' local and official knowledge upon that subject, has called out a long line of the rabble of travellers to inform you concerning the objects of his own government. That his learned counsel should be ignorant of those things is a matter of course. That, if left to himself, the person who has produced all this stuff should, in pursuit of his darling arbitrary power, wander without a guide, or with false guides, is quite natural. But your Lordships must have heard with astonishment, that, upon points of law relative to the tenure of lands, instead of producing any law document or authority on the usages and local customs of the country, he has referred to officers in the

army, colonels of artillery and engineers, to young gentlemen just come from school, not above three or four years in the country. Good God! would not one rather have expected to hear him put all these travellers to shame by the authority of a man who had resided so long in the supreme situation of government, — to set aside all these wild, loose, casual, and silly observations of travellers and theorists? On the contrary, as if he was ignorant of everything, as if he knew nothing of India, as if he had dropped from the clouds, he cites the observations of every stranger who had been hurried in a palanquin through the country, capable or incapable of observation, to prove to you the nature of the government, and of the power he had to exercise.

My Lords, the Commons of Great Britain are not disposed to resort to the ridiculous relations of travellers, or to the wild systems which ingenious men have thought proper to build on their authority. We will take another mode. We will undertake to prove the direct contrary of his assertions in every point and particular. We undertake to do this, because your Lordships know, and because the world knows, that, if you go into a country where you suppose man to be in a servile state, — where, the despot excepted, there is no one person who can lift up his head above another, — where all are a set of vile, miserable slaves, prostrate and confounded in a common servitude, having no descendible lands, no inheritance, nothing that makes man feel proud of himself, or that gives him honor and distinction with others, — this abject degradation will take from you that kind of sympathy which naturally attaches you to men feeling like yourselves, to men who have hereditary dig-

nities to support, and lands of inheritance to maintain, as you peers have; you will, I say, no longer have that feeling which you ought to have for the sufferings of a people whom you suppose to be habituated to their sufferings and familiar with degradation. This makes it absolutely necessary for me to refute every one of these misrepresentations; and whilst I am endeavoring to establish the rights of these people, in order to show in what manner and degree they have been violated, I trust that your Lordships will not think that the time is lost: certainly I do not think that my labor will be misspent in endeavoring to bring these matters fully before you.

In determining to treat this subject at length, I am also influenced by a strong sense of the evils that have attended the propagation of these wild, groundless, and pernicious opinions. A young man goes to India before he knows much of his own country; but he cherishes in his breast, as I hope every man will, a just and laudable partiality for the laws, liberties, rights, and institutions of his own nation. We all do this; and God forbid we should not prefer our own to every other country in the world! but if we go to India with an idea of the mean, degraded state of the people that we are to govern, and especially if we go with these impressions at an immature age, we know, that, according to the ordinary course of human nature, we shall not treat persons well whom we have learnt to despise. We know that people whom we suppose to have neither laws or rights will not be treated by us as a people who have laws and rights. This error, therefore, for our sake, for your sake, for the sake of the Indian public, and for the sake of all those who shall hereafter go in

any station to India, I think it necessary to disprove in every point.

I mean to prove the direct contrary of everything that has been said on this subject by the prisoner's counsel, or by himself. I mean to prove that the people of India have laws, rights, and immunities; that they have property, movable and immovable, descendible as well as occasional; that they have property held for life, and that they have it as well secured to them by the laws of their country as any property is secured in this country; that they feel for honor, not only as much as your Lordships can feel, but with a *more* exquisite and poignant sense than any people upon earth; and that, when punishments are inflicted, it is not the lash they feel, but the disgrace: in short, I mean to prove that every word which Montesquieu has taken from idle and inconsiderate travellers is absolutely false.

The people of India are divided into three kinds: the original natives of the country, commonly called Gentoos; the descendants of the Persians and Arabians, who are Mahometans; and the descendants of the Moguls, who originally had a religion of their own, but are now blended with the other inhabitants.

The primeval law of that country is the Gentoo law; and I refer your Lordships to Mr. Halhed's translation of that singular code, — a work which I have read with all the care that such an extraordinary view of human affairs and human constitutions deserves. I do not know whether Mr. Halhed's compilation is in evidence before your Lordships, but I do know that it is good authority on the Gentoo law. Mr. Hastings, who instructed his counsel to assert that the people have "no rights, no law,"

ought to be well acquainted with this work, because he claimed for a while the glory of the compilation, although Nobkissin, as your Lordships remember, was obliged to pay the expense. This book, a compilation of probably the most ancient laws in the world, if we except the Mosaic, has in it the duty of the magistrate and the duty of all ranks of subjects most clearly and distinctly ascertained; and I will give up the whole cause, if there is, from one end to the other of this code, any sort of arbitrary power claimed or asserted on the part of the magistrate, or any declaration that the people have no rights of property. No: it asserts the direct contrary.

First, the people are divided into classes and ranks, with more accuracy of distinction than is used in this country, or in any other country under heaven. Every class is divided into families, some of whom are more distinguished and more honorable than others; and they all have rights, privileges, and immunities belonging to them. Even in cases of conquest, no confiscation is to take place. A Brahmin's estate comes by descent to him; it is forever descendible to his heirs, if he has heirs; and if he has none, it belongs to his disciples, and those connected with him in the Brahminical caste. There are other immunities declared to belong to this caste, in direct contradiction to what has been asserted by the prisoner. In no case shall a Brahmin suffer death; in no case shall the property of a Brahmin, male or female, be confiscated for crime, or escheat for want of heirs. The law then goes on to other castes, and gives to each its property, and distinguishes them with great accuracy of discrimination.

Mr. Hastings says that there is no inheritable prop-

erty among them. Now you have only to look at page 27, chapter the second, the title of which is, *Of the Division of Inheritable Property.* There, after going through all the nicety of pedigree, it is declared, that, "when a father, or grandfather, a great-grandfather, or any relations of that nature, decease, or lose their caste, or renounce the world, or are desirous to give up their property, their sons, grandsons, great-grandsons, and other natural heirs, may divide and assume their glebe-lands, orchards, jewels, corals, clothes, furniture, cattle, and birds, and all the estate, real and personal." My Lords, this law recognizes this kind of property; it regulates it with the nicest accuracy of distinction; it settles the descent of it in every part and circumstance. It nowhere asserts (but the direct contrary is positively asserted) that the magistrate has any power whatever over property. It states that it is the magistrate's duty to protect it; that he is bound to govern by law; that he must have a council of Brahmins to assist him in every material act that he does: in short, my Lords, there is not even a trace of arbitrary power in the whole system.

My Lords, I will mention one article, to let you see, in a very few words, that these Gentoos not only have an inheritance, but that the law has established a right of *acquiring* possession in the property of another by prescription. The passage stands thus: — "If there be a person who is not a minor," (a man ceases to be a minor at fifteen years of age,) "nor impotent, nor diseased, nor an idiot, nor so lame as not to have power to walk, nor blind, nor one who, on going before a magistrate, is found incapable of distinguishing and attending to his own concerns,

and who has not given to another person power to employ and to use his property, — if, in the face of any such person, another man has applied to his own use, during the space of twenty years, the glebe-land or houses or orchards of that person, without let or molestation from him, from the twenty-first year the property becomes invested in the person so applying such things to his own use; and any claim of the first person above mentioned upon such glebe- [land or?] houses or orchards shall by no means stand good: but if the person before mentioned comes under any of the circumstances herein before described, his claim in that case shall stand good." Here you see, my Lords, that possession shall by prescription stand good against the claims of all persons who are not disqualified from making their claims.

I might, if necessary, show your Lordships that the highest magistrate is subject to the law; that there is a case in which he is finable; that they have established rules of evidence and of pleading, and, in short, all the rules which have been formed in other countries to prevent this very arbitrary power. Notwithstanding all this, the prisoner at the bar, and his counsel, have dared to assert, in this sacred temple of justice, in the presence of this great assembly, of all the bishops, of all the peers, and of all the judges of this land, that the people of India have no laws whatever.

I do not mean to trouble your Lordships with more extracts from this book. I recommend it to your Lordships' reading, — when you will find, that, so far from the magistrate having any power either to imprison arbitrarily or to fine arbitrarily, the rules of fines are laid down with ten thousand times more

exactness than with us. If you here find that the magistrate has any power to punish the people with arbitrary punishment, to seize their property, or to disfranchise them of any rights or privileges, I will readily admit that Mr. Hastings has laid down good, sound doctrine upon this subject. There is his own book, a compilation of their laws, which has in it not only good and excellent positive rules, but a system of as enlightened jurisprudence, with regard to the body and substance of it, as perhaps any nation ever possessed, — a system which must have been composed by men of highly cultivated understandings.

As to the travellers that have been quoted, absurd as they are in the ground of their argument, they are not less absurd in their reasonings. For, having first laid it down that there is no property, and that the government is the proprietor of everything, they argue, inferentially, that they have no laws. But if ever there were a people that seem to be protected with care and circumspection from all arbitrary power, both in the executive and judicial department, these are the people that seem to be so protected.

I could show your Lordships that they are so sensible of honor, that fines are levied and punishment inflicted according to the rank of the culprit, and that the very authority of the magistrate is dependent on their rank. That the learned counsel should be ignorant of these things is natural enough. They are concerned in the gainful part of their profession. If they know the laws of their own country, which I dare say they do, it is not to be expected that they should know the laws of any other. But, my Lords, it is to be expected that the prisoner should know the Gentoo laws: for he not only cheated Nobkissin of his money

to get these laws translated, but he took credit for the publication of the work as an act of public spirit, after shifting the payment from himself by fraud and peculation. All this has been proved by the testimonies of Mr. Auriol and Mr. Halhed before your Lordships.

We do not bring forward this book as evidence of guilt or innocence, but to show the laws and usages of the country, and to prove the prisoner's knowledge of them.

From the Gentoo we will proceed to the Tartarian government of India, a government established by conquest, and therefore not likely to be distinguished by any marks of extraordinary mildness towards the conquered. The book before me will prove to your Lordships that the head of this government (who is falsely supposed to have a despotic authority) is absolutely elected to his office. Tamerlane was elected; and Genghis Khân particularly valued himself on improving the laws and institutions of his own country. These laws we only have imperfectly in this book; but we are told in it, and I believe the fact, that he forbade, under pain of death, any prince or other person to presume to cause himself to be proclaimed Great Khân or Emperor, without being first duly elected by the princes lawfully assembled in general diet. He then established the privileges and immunities granted to the Tunkawns, — that is, to the nobility and gentry of the country, — and afterwards published most severe ordinances against governors who failed in doing their duty, but principally against those who commanded in far distant provinces. This prince was in this case, what I hope your Lordships will be, a very severe judge of the governors

of countries remote from the seat of the government.

My Lords, we have in this book sufficient proof that a Tartarian sovereign could not obtain the recognition of ancient laws, or establish new ones, without the consent of his parliament; that he could not ascend the throne without being duly elected; and that, when so elected, he was bound to preserve the great in all their immunities, and the people in all their rights, liberties, privileges, and properties. We find these great princes restrained by laws, and even making wise and salutary regulations for the countries which they conquered. We find Genghis Khân establishing one of his sons in a particular office, — namely, conservator of those laws; and he has ordered that they should not only be observed in his time, but by all posterity; and accordingly they are venerated at this time in Asia. If, then, this very Genghis Khân, if Tamerlane, did not assume arbitrary power, what are you to think of this man, so bloated with corruption, so bloated with the insolence of unmerited power, declaring that the people of India have no rights, no property, no laws, — that he could not be bound even by an English act of Parliament, — that he was an arbitrary sovereign in India, and could exact what penalties he pleased from the people, at the expense of liberty, property, and even life itself? Compare this man, this compound of pride and presumption, with Genghis Khân, whose conquests were more considerable than Alexander's, and yet who made the laws the rule of his conduct; compare him with Tamerlane, whose Institutes I have before me. I wish to save your Lordships' time, or I could show you in the life of this prince, that he, violent as his conquests

were, bloody as all conquests are, ferocious as a Mahometan making his crusades for the propagation of his religion, he yet knew how to govern his unjust acquisitions with equity and moderation. If any man could be entitled to claim arbitrary power, if such a claim could be justified by extent of conquest, by splendid personal qualities, by great learning and eloquence, Tamerlane was the man who could have made and justified the claim. This prince gave up all his time not employed in conquests to the conversation of learned men. He gave himself to all studies that might accomplish a great man. Such a man, I say, might, if any may, claim arbitrary power. But the very things that made him great made him sensible that he was but a man. Even in the midst of all his conquests, his tone was a tone of humility; he spoke of laws as every man must who knows what laws are; and though he was proud, ferocious, and violent in the achievement of his conquests, I will venture to say no prince ever established institutes of civil government more honorable to himself than the Institutes of Timour. I shall be content to be brought to shame before your Lordships, if the prisoner at your bar can show me one passage where the assumption of arbitrary power is even hinted at by this great conqueror. He declares that the nobility of every country shall be considered as his brethren, that the people shall be acknowledged as his children, and that the learned and the dervishes shall be particularly protected. But, my Lords, what he particularly valued himself upon I shall give your Lordships in his own words: — "I delivered the oppressed from the hand of the oppressor; and after proof of the oppression, whether on the property or the person, the de-

cision which I passed between them was agreeable to the sacred law; and I did not cause any one person to suffer for the guilt of another."*

My Lords, I have only further to inform your Lordships that these Institutes of Timour ought to be very well known to Mr. Hastings. He ought to have known that this prince never claimed arbitrary power; that the principles he adopted were to govern by law, to repress the oppressions of his inferior governors, to recognize in the nobility the respect due to their rank, and in the people the protection to which they were by law entitled. This book was published by Major Davy, and revised by Mr. White. The Major was an excellent Orientalist; he was secretary to Mr. Hastings, to whom, I believe, he dedicated this book. I have inquired of persons the most conversant with the Arabic and Oriental languages, and they are clearly of opinion that there is internal evidence to prove it of the age of Tamerlane; and he must be the most miserable of critics, who, reading this work with attention, does not see, that, if it was not written by this very great monarch himself, it was at least written by some person in his court and under his immediate inspection. Whether, therefore, this work be the composition of Tamerlane, or whether it was written by some persons of learning near him, through whom he meant to give the world a just idea of his manners, maxims, and government, it is certainly as good authority as Mr. Hastings's *Defence*, which he has acknowledged to have been written by other people.

From the Tartarian I shall now proceed to the later Mahometan conquerors of Hindostan: for it is fit

* Institutes of Timour, p. 165

that I should show your Lordships the wickedness of pretending that the people of India have no laws or rights. A great proportion of the people are Mahometans; and Mahometans are so far from having no laws or rights, that, when you name a Mahometan, you name a man governed by law and entitled to protection. Mr. Hastings caused to be published, and I am obliged to him for it, a book called "The Hedaya": it is true that he has himself taken credit for the work, and robbed Nobkissin of the money to pay for it; but the value of a book is not lessened because a man stole it. Will you believe, my Lords, that a people having no laws, no rights, no property, no honor, would be at the trouble of having so many writers on jurisprudence? And yet there are, I am sure, at least a thousand eminent Mahometan writers upon law, who have written far more voluminous works than are known in the Common Law of England, and I verily believe more voluminous than the writings of the Civilians themselves. That this should be done by a people who have no property is so perfectly ridiculous as scarcely to require refutation; but I shall endeavor to refute it, and without troubling you a great deal.

First, then, I am to tell you that the Mahometans are a people amongst whom the science of jurisprudence is much studied and cultivated; that they distinguish it into the law of the *Koran* and its authorized commentaries, — into the *Fetwah*, which is the judicial judgments and reports of adjudged cases, — into the *Canon*, which is the regulations made by the emperor for the sovereign authority in the government of their dominions, — and, lastly, into the *Rawaj-ul-Mulk*, or custom and usage, the common law of

the country, which prevails independent of any of the former.

In regard to punishments being arbitrary, I will, with your Lordships' permission, read a passage which will show you that the magistrate is a responsible person. "If a supreme ruler, such as the Caliph for the time being, commit any offence punishable by law, such as whoredom, theft, or drunkenness, he is not subject to any punishment; but yet if he commit murder, he is subject to the law of retaliation, and he is also accountable in matters of property: because *punishment* is a right of God, the infliction of which is committed to the Caliph, or other supreme magistrate, and to none else; and he cannot inflict punishment upon himself, as in this there is no advantage, because the good proposed in punishment is that it may operate as a warning to deter mankind from sin, and this is not obtained by a person's inflicting punishment upon himself, contrary to the rights of the *individual*, such as the laws of *retaliation* and of *property*, the penalties of which may be exacted of the Caliph, as the claimant of right may obtain satisfaction, either by the Caliph impowering him to exact his right from himself, or by the claimant appealing for assistance to the collective body of Mussulmans." *

Here your Lordships see that the Caliph, who is a magistrate of the highest authority which can exist among the Mahometans, where property or life is concerned has no arbitrary power, but is responsible just as much as any other man.

I am now to inform your Lordships that the sovereign can raise no taxes. The imposing of a tribute

* Hedaya, Vol. II. p. 34.

upon a Mussulman, without his previous consent, is impracticable. And so far from all property belonging to the sovereign, the public treasure does not belong to him. It is declared to be the common property of all Mahometans. This doctrine is laid down in many places, but particularly in the 95th page of the second volume of Hamilton's Hedaya.

Mr. Hastings has told you what a sovereign is, and what sovereignty is, all over India; and I wish your Lordships to pay particular attention to this part of his defence, and to compare Mr. Hastings's idea of sovereignty with the declaration of the Mahometan law. The tenth chapter of these laws treats of rebellion, which is defined an act of warfare against the sovereign. You are there told who the sovereign is, and how many kinds of rebels there are. The author then proceeds to say,—"The word *bâghee* (rebellion), in its literal sense, means prevarication, also, injustice and tyranny; in the language of the law it is particularly applied to injustice, namely, withdrawing from obedience to the rightful Imaum (as appears in the *Fattahal-Kadeen*). By the rightful Imaum is understood a person in whom all the qualities essential to magistracy are united, such as Islamism, freedom, sanity of intellect, and maturity of age, — and who has been elected into his office by any tribe of Mussulmans, with their general consent; whose view and intention is the advancement of the true religion and the strengthening of the Mussulmans, and under whom the Mussulmans enjoy security in person and property; one who levies tithe and tribute according to law; who out of the public treasury pays what is due to learned men, preachers, kâzees, muftis, philosophers, public teachers, and

so forth; and who is just in all his dealings with Mussulmans: for whoever does not answer this description is not the right Imaum; whence it is not incumbent to support such a one; but rather it is incumbent to oppose him and make war upon him, until such time as he either adopt a proper mode of conduct or be slain." *

My Lords, is this a magistrate of the same description as the sovereign delineated by Mr. Hastings? This man must be elected by the general consent of Mussulmans; he must be a protector of the person and property of his subjects; a right of resistance is directly established by law against him, and even the duty of resistance is insisted upon. Am I, in praising this Mahometan law, applauding the principle of elective sovereignty? No, my Lords, I know the mischiefs which have attended it; I know that it has shaken the thrones of most of the sovereigns of the Mussulman religion; but I produce the law as the clearest proof that such a sovereign cannot be supposed to have an arbitrary power over the property and persons of those who elect him, and who have an acknowledged right to resist and dethrone him, if he does not afford them protection.

I have now gone through what I undertook to prove, — that Mr. Hastings, with all his Indian Council, who have made up this volume of arbitrary power, are not supported by the laws of the Moguls, by the laws of the Gentoos, by the Mahometan laws, or by any law, custom, or usage which has ever been recognized as legal and valid.

But, my Lords, the prisoner defends himself by example; and, good God! what are the examples

* Hedaya, Vol. II. pp. 247, 248.

which he has chosen? Not the local usages and constitutions of Oude or of any other province; not the general practice of a respectable emperor, like Akbar, which, if it would not fatigue your Lordships, I could show to be the very reverse of this man's. No, my Lords, the prisoner, his learned counsel here, and his unlearned Cabinet Council, who wrote this defence, have ransacked the tales of travellers for examples, and have selected materials from that mass of loose remarks and crude conceptions, to prove that the natives of India have neither rights, laws, orders, or distinction.

I shall now proceed to show your Lordships that the people of India have a keen sense and feeling of disgrace and dishonor. In proof of this I appeal to well-known facts. There have been women tried in India for offences, and acquitted, who would not survive the disgrace even of acquittal. There have been Hindoo soldiers, condemned at a court-martial, who have desired to be blown from the mouth of a cannon, and have claimed rank and precedence at the last moment of their existence. And yet these people are said to have no sense of dishonor! Good God! that we should be under the necessity of proving, in this place, all these things, and of disproving that all India was given in slavery to this man!

But, my Lords, they will show you, they say, that Genghis Khân, Kouli Khân, and Tamerlane destroyed ten thousand times more people in battle than this man did. Good God! have they run mad? Have they lost their senses in their guilt? Did they ever expect that we meant to compare this man to Tamerlane, Genghis Khân, or Kouli Khân? — to compare a clerk at a bureau, to compare a fraudulent

bullock-contractor, (for we could show that his first elementary malversations were in carrying on fraudulent bullock-contracts, which contracts were taken from him with shame and disgrace, and restored with greater shame and disgrace,) to compare him with the conquerors of the world? We never said he was a tiger and a lion: no, we have said he was a weasel and a rat. We have said that he has desolated countries by the same means that plagues of his description have produced similar desolations. We have said that he, a fraudulent bullock-contractor, exalted to great and unmerited powers, can do more mischief than even all the tigers and lions in the world. We know that a swarm of locusts, although individually despicable, can render a country more desolate than Genghis Khân or Tamerlane. When God Almighty chose to humble the pride and presumption of Pharaoh, and to bring him to shame, He did not effect His purpose with tigers and lions; but He sent lice, mice, frogs, and everything loathsome and contemptible, to pollute and destroy the country. Think of this, my Lords, and of your listening here to these people's long account of Tamerlane's camp of two hundred thousand persons, and of his building a pyramid at Bagdad with the heads of ninety thousand of his prisoners!

We have not accused Mr. Hastings of being a great general, and abusing his military powers: we know that he was nothing, at the best, but a creature of the bureau, raised by peculiar circumstances to the possession of a power by which incredible mischief might be done. We have not accused him of the vices of conquerors: when we see him signalized by any conquests, we may then make such an accusa-

tion; at present we say that he has been trusted with power much beyond his deserts, and that trust he has grossly abused. —But to proceed.

His counsel, according to their usual audacious manner, (I suppose they imagine that they are counsel for Tamerlane, or for Genghis Khân,) have thought proper to accuse the Managers for the Commons of wandering [wantoning?] in all the fabulous regions of Indian mythology. My Lords, the Managers are sensible of the dignity of their place; they have never offered anything to you without reason. We are not persons of an age, of a disposition, of a character, representative or natural, to *wanton*, as these counsel call it, — that is, to invent fables concerning Indian antiquity. That they are not ashamed of making this charge I do not wonder. But we are not to be thus diverted from our course.

I have already stated to your Lordships a material circumstance of this case, which I hope will never be lost sight of, — namely, the different situation in which India stood under the government of its native princes and its own original laws, and even under the *dominion* of Mahometan conquerors, from that in which it has stood under the government of a series of tyrants, foreign and domestic, particularly of Mr. Hastings, by whom it has latterly been oppressed and desolated. One of the books which I have quoted was written by Mr. Halhed; and I shall not be accused of wantoning in fabulous antiquity, when I refer to another living author, who wrote from what he saw and what he well knew. This author says, — "In truth, it would be almost cruelty to molest these happy people" (speaking of the inhabitants of one of the provinces near Calcutta); "for in this district are

the only vestiges of the beauty, purity, piety, regularity, equity, and strictness of the ancient Hindostan government: here the property as well as the liberty of the people is inviolate." My Lords, I do not refer you to this writer because I think it necessary to our justification, nor from any fear that your Lordships will not do us the justice to believe that we have good authority for the facts which we state, and do not (as persons with their licentious tongues dare to say) wanton in fabulous antiquity. I quote the works of this author, because his observations and opinions could not be unknown to Mr. Hastings, whose associate he was in some acts, and whose adviser he appears to have been in that dreadful transaction, the deposition of Cossim Ali Khân. This writer was connected with the prisoner at your bar in bribery, and has charged him with detaining his bribe. To this Mr. Hastings has answered, that he had paid him long ago. How they have settled that corrupt transaction I know not. I merely state all this to prove that we have not dealt in fabulous history, and that, if anybody has dealt in falsehood, it is Mr. Hastings's companion and associate in guilt, who must have known the country, and who, however faulty he was in other respects, had in this case no interest whatever in misrepresentation.

I might refer your Lordships, if it were necessary, to Scrafton's account of that ancient government, in order to prove to you the happy comparative state of that country, even under its former usurpers. Our design, my Lords, in making such references, is not merely to disprove the prisoner's defence, but to vindicate the rights and privileges of the people of India. We wish to reinstate them in your sympathy. We

wish you to respect a people as respectable as yourselves, — a people who know as well as you what is rank, what is law, what is property, — a people who know how to feel disgrace, who know what equity, what reason, what proportion in punishments, what security of property is, just as well as any of your Lordships; for these are things which are secured to them by laws, by religion, by declarations of all their sovereigns. And what, my Lords, is opposed to all this? The practice of tyrants and usurpers, which Mr. Hastings takes for his rule and guidance. He endeavors to find deviations from legal government, and then instructs his counsel to say that I have asserted there is no such thing as arbitrary power in the East. Good God! if there was no such thing in any other part of the world, Mr. Hastings's conduct might have convinced me of the existence of arbitrary power, and have taught me much of its mischief.

But, my Lords, we all know that there has been arbitrary power in India, — that tyrants have usurped it, — and that, in some instances, princes otherwise meritorious have violated the liberties of the people, and have been lawfully deposed for such violation. I do not deny that there are robberies on Hounslow Heath, — that there are such things as forgeries, burglaries, and murders; but I say that these acts are against law, and that whoever commit them commit illegal acts. When a man is to defend himself against a charge of crime, it is not instances of similar violation of law that is to be the standard of his defence. A man may as well say, "I robbed upon Hounslow Heath, but hundreds robbed there before me": to which I answer, "The law has forbidden you to rob there; and I will hang you for having vio-

lated the law, notwithstanding the long list of similar violations which you have produced as precedents." No doubt princes have violated the law of this country: they have suffered for it. Nobles have violated the law: their privileges have not protected them from punishment. Common people have violated the law: they have been hanged for it. I know no human being exempt from the law. The law is the security of the people of England; it is the security of the people of India; it is the security of every person that is governed, and of every person that governs. There is but one law for all, namely, that law which governs all law, the law of our Creator, the law of humanity, justice, equity, — the Law of Nature and of Nations. So far as any laws fortify this primeval law, and give it more precision, more energy, more effect by their declarations, such laws enter into the sanctuary, and participate in the sacredness of its character. But the man who quotes as precedents the abuses of tyrants and robbers pollutes the very fountain of justice, destroys the foundations of all law, and thereby removes the only safeguard against evil men, whether governors or governed, — the guard which prevents governors from becoming tyrants, and the governed from becoming rebels.

I hope your Lordships will not think that I have unnecessarily occupied your time in disproving the plea of arbitrary power, which has been brought forward at our bar, has been repeated at your Lordships' bar, and has been put upon the records of both Houses. I hope your Lordships will not think that such monstrous doctrine should be passed over, without all possible pains being taken to demonstrate

its falsehood and to reprobate its tendency. I have not spared myself in exposing the principles avowed by the prisoner. At another time I will endeavor to show you the manner in which he acted upon these principles. I cannot command strength to proceed further at present; and you, my Lords, cannot give me greater bodily strength than I have.

SPEECH

IN

GENERAL REPLY.

SECOND DAY: FRIDAY, MAY 30, 1794.

MY LORDS, — On the last day of the sitting of this court, when I had the honor of appearing before you by the order of my fellow Managers, I stated to you their observations and my own upon two great points: one the demeanor of the prisoner at the bar during his trial, and the other the principles of his defence. I compared that demeanor with the behavior of some of the greatest men in this kingdom, who have, on account of their offences, been brought to your bar, and who have seldom escaped your Lordships' justice. I put the decency, humility, and propriety of the most distinguished men's behavior in contrast with the shameless effrontery of this prisoner, who has presumptuously made a recriminatory charge against the House of Commons, and answered their impeachment by a counter impeachment, explicitly accusing them of malice, oppression, and the blackest ingratitude.

My Lords, I next stated that this recriminatory charge consisted of two distinct parts, — injustice and delay. To the injustice we are to answer by the nature and proof of the charges which we have brought before you; and to the delay, my Lords, we have answered in another place. Into one of the conse-

quences of the delay, the ruinous expense which the prisoner complains of, we have desired your Lordships to make an inquiry, and have referred you to facts and witnesses which will remove this part of the charge.

With regard to ingratitude, there will be a proper time for animadversion on this charge. For in considering the merits that are intended to be set off against his crimes, we shall have to examine into the nature of those merits, and to ascertain how far they are to operate, either as the prisoner designs they shall operate in his favor, as presumptive proofs that a man of such merits could not be guilty of such crimes, or as a sort of set-off to be pleaded in mitigation of his offences. In both of these lights we shall consider his services, and in this consideration we shall determine the justice of his charge of ingratitude.

My Lords, we have brought the demeanor of the prisoner before you for another reason. We are desirous that your Lordships may be enabled to estimate, from the proud presumption and audacity of the criminal at your bar, when he stands before the most awful tribunal in the world, accused by a body representing no less than the sacred voice of his country, what he must have been when placed in the seat of pride and power. What must have been the insolence of that man towards the natives of India, who, when called here to answer for enormous crimes, presumes to behave, not with the firmness of innocence, but with the audacity and hardness of guilt!

It may be necessary that I should recall to your Lordships' recollection the principles of the accusation and of the defence. Your Lordships will bear

in mind that the matters of fact are all either settled by confession or conviction, and that the question now before you is no longer an issue of fact, but an issue of law. The question is, what degree of merit or demerit you are to assign by law to actions which have been laid before you, and their truth acknowledged.

The principle being established that you are to decide upon an issue at law, we examined by what law the prisoner ought to be tried; and we preferred a claim which we do now solemnly prefer, and which we trust your Lordships will concur with us in a laudable emulation to establish, — a claim founded upon the great truths, that all power is limited by law, and ought to be guided by discretion, and not by arbitrary will, — that all discretion must be referred to the conservation and benefit of those over whom power is exercised, and therefore must be guided by rules of sound political morality.

We next contended, that, wherever existing laws were applicable, the prisoner at your bar was bound by the laws and statutes of this kingdom, as a British subject; and that, whenever he exercised authority in the name of the Company, or in the name of his Majesty, or under any other name, he was bound by the laws and statutes of this kingdom, both in letter and spirit, so far as they were applicable to him and to his case; and above all, that he was bound by the act to which he owed his appointment, in all transactions with foreign powers, to act according to the known recognized rules of the Law of Nations, whether these powers were really or nominally sovereign, whether they were dependent or independent.

The next point which we established, and which

we now call to your Lordships' recollection, is, that he was bound to proceed according to the laws, rights, laudable customs, privileges, and franchises of the country that he governed; and we contended that to such laws, rights, privileges, and franchises the people of the country had a clear and just claim.

Having established these points as the basis of Mr. Hastings's general power, we contended that he was obliged by the nature of his relation, as a servant to the Company, to be obedient to their orders at all times, and particularly where he had entered into special covenants regarding special articles of obedience.

These are the principles by which we have examined the conduct of this man, and upon which we have brought him to your Lordships' bar for judgment. This is our table of the law. Your Lordships shall now be shown the table by which he claims to be judged. But I will first beg your Lordships to take notice of the utter contempt with which he treats all our acts of Parliament.

Speaking of the absolute sovereignty which he would have you believe is exercised by the princes of India, he says, "The sovereignty which they assumed it fell to my lot, very unexpectedly, to exert; and whether or not such power, or powers of that nature, were delegated to me by any provisions of any act of Parliament I confess myself too little of a lawyer to pronounce," and so on. This is the manner in which he treats an act of Parliament! In the place of acts of Parliament he substitutes his own arbitrary will. This he contends is the sole law of the country he governed, as laid down in what he calls the arbitrary Institutes of Genghis Khân and

Tamerlane. This arbitrary will he claims, to the exclusion of the Gentoo law, the Mahometan law, and the law of his own country. He claims the right of making his own will the sole rule of his government, and justifies the exercise of this power by the examples of Aliverdy Khân, Cossim Ali Khân, Sujah Dowlah Khân, and all those Khâns who have rebelled against their masters, and desolated the countries subjected to their rule. This, my Lords, is the law which he has laid down for himself, and these are the examples which he has expressly told the House of Commons he is resolved to follow. These examples, my Lords, and the principles with which they are connected, without any softening or mitigation, he has prescribed to you as the rule by which his conduct is to be judged.

Another principle of the prisoner is, that, whenever the Company's affairs are in distress, even when that distress proceeds from his own prodigality, mismanagement, or corruption, he has a right to take for the Company's benefit privately in his own name, with the future application of it to their use reserved in his own breast, every kind of bribe or corrupt present whatever.

I have now restated to your Lordships the maxims by which the prisoner persists in defending himself, and the principles upon which we claim to have him judged. The issue before your Lordships is a hundred times more important than the cause itself, for it is to determine by what law or maxims of law the conduct of governors is to be judged.

On one side, your Lordships have the prisoner declaring that the people have no laws, no rights, no usages, no distinctions of rank, no sense of honor, no

property, — in short, that they are nothing but a herd of slaves, to be governed by the arbitrary will of a master. On the other side, we assert that the direct contrary of this is true. And to prove our assertion we have referred you to the Institutes of Genghis Khân and of Tamerlane; we have referred you to the Mahometan law, which is binding upon all, from the crowned head to the meanest subject, — a law interwoven with a system of the wisest, the most learned, and most enlightened jurisprudence that perhaps ever existed in the world. We have shown you, that, if these parties are to be compared together, it is not the rights of the people which are nothing, but rather the rights of the sovereign which are so. The rights of the people are everything, as they ought to be, in the true and natural order of things. God forbid that these maxims should trench upon sovereignty, and its true, just, and lawful prerogative! — on the contrary, they ought to support and establish them. The sovereign's rights are undoubtedly sacred rights, and ought to be so held in every country in the world, because exercised for the benefit of the people, and in subordination to that great end for which alone God has vested power in any man or any set of men. This is the law that we insist upon, and these are the principles upon which your Lordships are to try the prisoner at your bar.

Let me remind your Lordships that these people lived under the laws to which I have referred you, and that these laws were formed whilst we, I may say, were in the forest, certainly before we knew what technical jurisprudence was. These laws are allowed to be the basis and substratum of the manners, customs, and opinions of the people of India; and we

contend that Mr. Hastings is bound to know them and to act by them; and I shall prove that the very condition upon which he received power in India was to protect the people in their laws and known rights. But whether Mr. Hastings did know these laws, or whether, content with credit gained by as base a fraud as was ever practised, he did not read the books which Nobkissin paid for, we take the benefit of them: we know and speak after knowledge of them. And although I believe his Council have never read them, I should be sorry to stand in this place, if there was one word and tittle in these books that I had not read over.

We therefore come here and declare to you that he is not borne out by these Institutes, either in their general spirit or in any particular passage to which he has had the impudence to appeal, in the assumption of the arbitrary power which he has exercised. We claim, that, as our own government and every person exercising authority in Great Britain is bound by the laws of Great Britain, so every person exercising authority in another country shall be subject to the laws of that country; since otherwise they break the very covenant by which we hold our power there. Even if these Institutes had been arbitrary, which they are not, they might have been excused as the acts of conquerors. But, my Lords, he is no conqueror, nor anything but what you see him, — a bad scribbler of absurd papers, in which he can put no two sentences together without contradiction. We know him in no other character than that of having been a bullock-contractor for some years, of having acted fraudulently in that capacity, and afterwards giving fraudulent contracts to others; and yet I will

maintain that the first conquerors of the world would have been base and abandoned, if they had assumed such a right as he dares to claim. It is the glory of all such great men to have for their motto, *Parcere subjectis et debellare superbos.* These were men that said they would recompense the countries which they had obtained through torrents of blood, through carnage and violence, by the justice of their institutions, the mildness of their laws, and the equity of their government. Even if these conquerors had promulgated arbitrary institutes instead of disclaiming them in every point, you, my Lords, would never suffer such principles of defence to be urged here; still less will you suffer the examples of men acting by violence, of men acting by wrong, the example of a man who has become a rebel to his sovereign in order that he should become the tyrant of his people, to be examples for a British governor, or for any governor. We here confidently protest against this mode of justification, and we maintain that his pretending to follow these examples is in itself a crime. The prisoner has ransacked all Asia for principles of despotism; he has ransacked all the bad and corrupted part of it for tyrannical examples to justify himself: and certainly in no other way can he be justified.

Having established the falsehood of the first principle of the prisoner's defence, that sovereignty, wherever it exists in India, implies in its nature and essence a power of exacting anything from the subject, and disposing of his person and property, we now come to his second assertion, that he was the true, full, and perfect representative of that sovereignty in India.

In opposition to this assertion we first do positively

deny that he or the Company are the perfect representative of any sovereign power whatever. They have certain rights by their charter, and by acts of Parliament, but they have no other. They have their legal rights only, and these do not imply any such thing as sovereign power. The sovereignty of Great Britain is in the King; he is the sovereign of the Lords and the sovereign of the Commons, individually and collectively; and as he has his prerogative established by law, he must exercise it, and all persons claiming and deriving under him, whether by act of Parliament, whether by charter of the Crown, or by any other mode whatever, all are alike bound by law, and responsible to it. No one can assume or receive any power of sovereignty, because the sovereignty is in the Crown, and cannot be delegated away from the Crown; no such delegation ever took place, or ever was intended, as any one may see in the act by which Mr. Hastings was nominated Governor. He cannot, therefore, exercise that high supreme sovereignty which is vested by the law, with the consent of both Houses of Parliament, in the King, and in the King only. It is a violent, rebellious assumption of power, when Mr. Hastings pretends fully, perfectly, and entirely to represent the sovereign of this country, and to exercise legislative, executive, and judicial authority, with as large and broad a sway as his Majesty, acting with the consent of the two Houses of Parliament, and agreeably to the laws of this kingdom. I say, my Lords, this is a traitorous and rebellious assumption, which he has no right to make, and which we charge against him, and therefore it cannot be urged in justification of his conduct in any respect.

He next alleges, with reference to one particular case, that he received this sovereignty from the Vizier Sujah Dowlah, who he pretends was sovereign, with an unlimited power over the life, goods, and property of Cheyt Sing. This we positively deny. Whatever power the supreme sovereign of the empire had, we deny that it was delegated to Sujah Dowlah. He never was in possession of it. He was a vizier of the empire; he had a grant of certain lands for the support of that dignity: and we refer you to the Institutes of Timour, to the Institutes of Akbar, to the institutes of the Mahometan law, for the powers of delegated governors and viceroys. You will find that there is not a trace of sovereignty in them, but that they are, to all intents and purposes, mere subjects; and consequently, as Sujah Dowlah had not these powers, he could not transfer them to the India Company. His master, the Mogul emperor, had them not. I defy any man to show an instance of that emperor's claiming any such thing as arbitrary power; much less can it be claimed by a rebellious viceroy who had broken loose from his sovereign's authority, just as this man broke loose from the authority of Parliament. The one had not a right to give, nor the other to receive such powers. But whatever rights were vested in the Mogul, they cannot belong either to Sujah Dowlah, to Mr. Hastings, or to the Company. These latter are expressly bound by their compact to take care of the subjects of the empire, and to govern them according to law, reason, and equity; and when they do otherwise, they are guilty of tyranny, of a violation of the rights of the people, and of rebellion against their sovereign.

We have taken these pains to ascertain and fix

principles, because your Lordships are not called upon to judge of facts. A jury may find facts, but no jury can form a judgment of law; it is an application of the law to the fact that makes the act criminal or laudable. You must find a fixed standard of some kind or other; for if there is no standard but the immediate momentary purpose of the day, guided and governed by the man who uses it, fixed not only for the disposition of all the wealth and strength of the state, but for the life, fortune, and property of every individual, your Lordships are left without a principle to direct your judgment. This high court, this supreme court of appeal from all the courts of the kingdom, this highest court of criminal jurisdiction, exercised upon the requisition of the House of Commons, if left without a rule, would be as lawless as the wild savage, and as unprincipled as the prisoner that stands at your bar. Our whole issue is upon principles, and what I shall say to you will be in perpetual reference to them; because it is better to have no principles at all than to have false principles of government and of morality. Leave a man to his passions, and you leave a wild beast to a savage and capricious nature. A wild beast, indeed, when its stomach is full, will caress you, and may lick your hands; in like manner, when a tyrant is pleased or his passion satiated, you may have a happy and serene day under an arbitrary government. But when the principle founded on solid reason, which ought to restrain passion, is perverted from its proper end, the false principle will be substituted for it, and then man becomes ten times worse than a wild beast. The evil principle, grown solid and perennial, goads him on and takes entire possession of his mind; and then

perhaps the best refuge that you can have from that diabolical principle is in the natural wild passions and unbridled appetites of mankind. This is a dreadful state of things; and therefore we have thought it necessary to say a great deal upon his principles.

My Lords, we come next to apply these principles to facts which cannot otherwise be judged, as we have contended and do now contend. I will not go over facts which have been opened to you by my fellow Managers: if I did so, I should appear to have a distrust, which I am sure no other man has, of the greatest abilities displayed in the greatest of all causes. I should be guilty of a presumption which I hope I shall not dream of, but leave to those who exercise arbitrary power, in supposing that I could go over the ground which my fellow Managers have once trodden, and make anything more clear and forcible than they have done. In my humble opinion, human ability cannot go farther than they have gone; and if I ever allude to anything which they have already touched, it will be to show it in another light, — to mark more particularly its departure from the principles upon which we contend you ought to judge, or to supply those parts which through bodily infirmity, and I am sure nothing else, one of my excellent fellow Managers has left untouched. I am here alluding to the case of Cheyt Sing.

My honorable fellow Manager, Mr. Grey, has stated to you all the circumstances requisite to prove two things: first, that the demands made by Mr. Hastings upon Cheyt Sing were contrary to fundamental treaties between the Company and that Rajah; and next, that they were the result and effect of private malice

and corruption. This having been stated and proved to you, I shall take up the subject where it was left.

My Lords, in the first place, I have to remark to you, that the whole of the charge originally brought by Mr. Hastings against Cheyt Sing, in justification of his wicked and tyrannical proceedings, is, that he had been dilatory, evasive, shuffling, and unwilling to pay that which, however unwilling, evasive, and shuffling, he did pay; and that, with regard to the business of furnishing cavalry, the Rajah has asserted, and his assertion has not been denied, that, when he was desired by the Council to furnish these troopers, the purpose for which this application was made was not mentioned or alluded to, nor was there any place of muster pointed out. We therefore contended, that the demand was not made for the service of the state, but for the oppression of the individual that suffered by it.

But admitting the Rajah to have been guilty of delay and unwillingness, what is the nature of the offence? If you strip it of the epithets by which it has been disguised, it merely amounts to an unwillingness in the Rajah to pay more than the sums stipulated by the mutual agreement existing between him and the Company. This is the whole of it, the whole front and head of the offence; and for this offence, such as it is, and admitting that he could be legally fined for it, he was subjected to the secret punishment of giving a bribe to Mr. Hastings, by which he was to buy off the fine, and which was consequently a commutation for it.

That your Lordships may be enabled to judge more fully of the nature of this offence, let us see in what relation Cheyt Sing stood with the Company. He

was, my Lords, a person clothed with every one of the attributes of sovereignty, under a direct stipulation that the Company should not interfere in his internal government. The military and civil authority, the power of life and death, the whole revenue, and the whole administration of the law, rested in him. Such was the sovereignty he possessed within Benares: but he was a subordinate sovereign dependent upon a superior, according to the tenor of his compact, expressed or implied. Now, having contended, as we still contend, that the Law of Nations is the law of India as well as of Europe, because it is the law of reason and the law of Nature, drawn from the pure sources of morality, of public good, and of natural equity, and recognized and digested into order by the labor of learned men, I will refer your Lordships to Vattel, Book I. Cap. 16, where he treats of the breach of such agreements, by the protector refusing to give protection, or the protected refusing to perform his part of the engagement. My design in referring you to this author is to prove that Cheyt Sing, so far from being blamable in raising objections to the unauthorized demand made upon him by Mr. Hastings, was absolutely bound to do so; nor could he have done otherwise, without hazarding the whole benefit of the agreement upon which his subjection and protection were founded. The law is the same with respect to both contracting parties: if the protected or protector does not fulfil with fidelity *each his separate stipulation*, the protected may resist the unauthorized demand of the protector, or the protector is discharged from his engagement; he may refuse protection, and declare the treaty broken.

We contend in favor of Cheyt Sing, in support of

the principles of natural equity, and of the Law of Nations, which is the birthright of us all, — we contend, I say, that Cheyt Sing would have established, in the opinions of the best writers on the Law of Nations, a precedent against himself for any future violation of the engagement, if he submitted to any new demand, without what our laws call a continual claim or perpetual remonstrance against the imposition. Instead, therefore, of doing that which was criminal, he did that which his safety and his duty bound him to do; and for doing this he was considered by Mr. Hastings as being guilty of a great crime. In a paper which was published by the prisoner in justification of this act, he considers the Rajah to have been guilty of rebellious intentions; and he represents these acts of contumacy, as he calls them, not as proofs of contumacy merely, but as proofs of a settled design to rebel, and to throw off the authority of that nation by which he was protected. This belief he declares on oath to be the ground of his conduct towards Cheyt Sing.

Now, my Lords, we do contend, that, if any subject, under any name, or of any description, be not engaged in public, open rebellion, but continues to acknowledge the authority of his sovereign, and, if tributary, to pay tribute conformably to agreement, such a subject, in case of being suspected of having formed traitorous designs, ought to be treated in a manner totally different from that which was adopted by Mr. Hastings. If the Rajah of Benares had formed a secret conspiracy, Mr. Hastings had a state duty and a judicial duty to perform. He was bound, as Governor, knowing of such a conspiracy, to provide for the public safety; and as a judge, he was bound to convene a criminal court, and to lay before it a

detailed accusation of the offence. He was bound to proceed publicly and legally against the accused, and to convict him of his crime, previous to his inflicting, or forming any intention of inflicting, punishment. I say, my Lords, that Mr. Hastings, as a magistrate, was bound to proceed against the Rajah either by English law, by Mahometan law, or by the Gentoo law; and that, by all or any of these laws, he was bound to make the accused acquainted with the crime alleged, to hear his answer to the charge, and to produce evidence against him, in an open, clear, and judicial manner. And here, my Lords, we have again to remark, that the Mahometan law is a great discriminator of persons, and that it prescribes the mode of proceeding against those who are accused of any delinquency requiring punishment, with a reference to the distinction and rank which the accused held in society. The proceedings are exceedingly sober, regular, and respectful, even to criminals charged with the highest crimes; and every magistrate is required to exercise his office in the prescribed manner. In the Hedaya, after declaring and discussing the propriety of the Kâzi's sitting openly in the execution of his office, it is added, that there is no impropriety in the Kâzi sitting in his own house to pass judgment, but it is requisite that he give orders for a free access to the people. It then proceeds thus:—"It is requisite that such people sit along with the Kâzi as were used to sit with him, prior to his appointment to the office; because, if he were to sit alone in his house, he would thereby give rise to suspicion." *

My Lords, having thus seen what the duty of a

* Hedaya, Vol. II. p. 621.

judge is in such a case, let us examine whether Mr. Hastings observed any part of the prescribed rules. First, with regard to the publicity of the matter. Did he ever give any notice to the Supreme Council of the charges which he says he had received against Cheyt Sing? Did he accuse the Rajah in the Council, even when it was reduced to himself and his poor, worn down, cowed, and I am afraid bribed colleague, Mr. Wheler? Did he even then, I ask, produce any one charge against this man? He sat in Council as a judge, — as an English judge, — as a Mahometan judge, — as a judge by the Gentoo law, and by the Law of Nature. He should have summoned the party to appear in person, or by his attorney, before him, and should have there informed him of the charge against him. But, my Lords, he did not act thus. He kept the accusation secret in his own bosom. And why? Because he did not believe it to be true. This may at least be inferred from his having never informed the Council of the matter. He never informed the Rajah of Benares of the suspicions entertained against him, during the discussions which took place respecting the multiplied demands that were made upon him. He never told this victim, as he has had the audacity to tell us and all this kingdom in the paper that is before your Lordships, that he looked upon these refusals to comply with his demands to be overt acts of rebellion; nor did he ever call upon him to answer or to justify himself with regard to that imputed conspiracy or rebellion. Did he tell Sadanund, the Rajah's agent, when that agent was giving him a bribe or a present in secret, and was thus endeavoring to deprecate his wrath, that he accepted that bribe because his master was in rebel-

lion? Never, my Lords; nor did he, when he first reached Benares, and had the Rajah in his power, suggest one word concerning this rebellion. Did he, when he met Mr. Markham at Boglipore, where they consulted about the destruction of this unhappy man, did he tell Mr. Markham, or did Mr. Markham insinuate to him, any one thing about this conspiracy and rebellion? No, not a word there, or in his whole progress up the country. While at Boglipore, he wrote a letter to Lord Macartney upon the state of the empire, giving him much and various advice. Did he insinuate in that letter that he was going up to Benares to suppress a rebellion of the Rajah Cheyt Sing or to punish him? No, not a word. Did he, my Lords, at the eve of his departure from Calcutta, when he communicated his intention of taking 500,000*l.*, which he calls a fine or penalty, from the Rajah, did he inform Mr. Wheler of it? No, not a word of his rebellion, nor anything like it. Did he inform his secret confidants, Mr. Anderson and Major Palmer, upon that subject? Not a word, there was not a word dropped from him of any such rebellion, or of any intention in the Rajah Cheyt Sing to rebel. Did he, when he had vakeels in every part of the Mahratta empire and in the country of Sujah Dowlah, when he had in most of those courts English ambassadors and native spies, did he either from ambassadors or spies receive anything like authentic intelligence upon this subject? While he was at Benares, he had in his hands Benaram Pundit, the vakeel of the Rajah of Berar, his own confidential friend, a person whom he took out of the service of his master, and to whom he gave a jaghire in this very zemindary of Benares. This man, so attached

to Mr. Hastings, so knowing in all the transactions of India, neither accused Cheyt Sing of rebellious intentions, or furnished Mr. Hastings with one single proof that any conspiracy with any foreign power existed.

In this absence of evidence, My Lords, let us have recourse to probability. Is it to be believed that the Zemindar of Benares, a person whom Mr. Hastings describes as being of a timid, weak, irresolute, and feeble nature, should venture to make war alone with the whole power of the Company in India, aided by all the powers which Great Britain could bring to the protection of its Indian empire? Could that poor man, in his comparatively small district, possibly have formed such an intention, without giving Mr. Hastings access to the knowledge of the fact from one or other of the numerous correspondents which he had in that country?

As to the Rajah's supposed intrigues with the Nabob of Oude: this man was an actual prisoner of Mr. Hastings, and nothing else, — a mere vassal, as he says himself, in effect and substance, though not in name. Can any one believe or think that Mr. Hastings would not have received from the English Resident, or from some one of that tribe of English gentlemen and English military collectors who were placed in that country in the exercise of the most arbitrary powers, some intelligence which he could trust, if any rebellious designs had really existed previous to the rebellion which did actually break out upon his arresting Cheyt Sing?

There was an ancient Roman lawyer, of great fame in the history of Roman jurisprudence, whom they called *Cui Bono*, from his having first introduced into

juridical proceedings the argument, *What end or object could the party have had in the act with which he is accused?* Surely it may be here asked, Why should Cheyt Sing wish to rebel, who held on easy and moderate terms (for such I admit they were) a very considerable territory, with every attribute of royalty attached? The tribute was paid for protection, which he had a right to claim, and which he actually received. What reason under heaven could he have to go and seek another master, to place himself under the protection of Sujah Dowlah, in whose hands Mr. Hastings tells you, in so many direct and plain words, that neither the Rajah's property, his honor, or his life could be safe? Was he to seek refuge with the Mahrattas, who, though Gentoos like himself, had reduced every nation which they subdued, except those who were originally of their own empire, to a severe servitude? Can any one believe that he wished either for the one or the other of these charges [changes?], or that he was desirous to quit the happy independent situation in which he stood under the protection of the British empire, from any loose, wild, improbable notion of mending his condition? My Lords, it is impossible. There is not one particle of evidence, not one word of this charge on record, prior to the publication of Mr. Hastings's Narrative; and all the presumptive evidence in the world would scarcely be sufficient to prove the fact, because it is almost impossible that it should be true.

But, my Lords, although Mr. Hastings swore to the truth of this charge, when he came before the House of Commons, yet in his Narrative he thus fairly and candidly avowed that he entertained no such opinion at the time. "Every step," says he,

"which I had taken before that fatal moment, namely, the flight of Cheyt Sing, is an incontrovertible proof that I had formed no design of seizing upon the Rajah's treasures or of deposing him. And certainly, at the time when I did form the design of making the punishment that his former ill conduct deserved subservient to the exigencies of the state by a large fine, I did not believe him guilty of that premeditated project for driving the English out of India with which I afterwards charged him." Thus, then, he declares upon oath that the Rajah's contumacy was the ground of his suspecting him of rebellion, and yet, when he comes to make his defence before the House of Commons, he simply and candidly declares, that, long after these alleged acts of contumacy had taken place, he did not believe him to be guilty of any such thing as rebellion, and that the fine imposed upon him was for another reason and another purpose.

In page 28 of your printed Minutes he thus declares the purpose for which the fine was imposed: — "I can answer only to this formidable dilemma, that, so long as I conceived Cheyt Sing's misconduct and contumacy to have me rather than the Company for its object, at least to be merely the effect of pernicious advice or misguided folly, without any formal design of openly resisting our authority or disclaiming our sovereignty, I looked upon a considerable fine as sufficient both for his immediate punishment and for binding him to future good behavior."

Here, my Lords, the secret comes out. He declares it was not for a rebellion or a suspicion of rebellion that he resolved, over and above all his exorbitant demands, to take from the Rajah 500,000*l.*,

(a good stout sum to be taken from a tributary power!) — that it was not for misconduct of this kind that he took this sum, but for personal ill behavior towards himself. I must again beg your Lordships to note that he then considered the Rajah's contumacy as having for its object, not the Company, but Warren Hastings, and that he afterwards declared publicly to the House of Commons, and now before your Lordships he declares finally and conclusively, that he did believe Cheyt Sing to have had the criminal intention imputed to him.

"So long," says he, "as I conceived Cheyt Sing's misconduct and contumacy to have *me*," (in Italics, as he ordered it to be printed,) "rather than the Company, for its object, so long I was satisfied with a fine: I therefore entertained no serious thoughts of expelling him, or proceeding otherwise to violence. But when he and his people broke out into the most atrocious acts of rebellion and murder, when the *jus fortioris et lex ultima regum* were appealed to on his part, and without any sufficient plea afforded him on mine, I from that moment considered him as the traitor and criminal described in the charge, and no concessions, no humiliations, could ever after induce me to settle on him the zemindary of Benares, or any other territory, upon any footing whatever."

Thus, then, my Lords, he has confessed that the era and the only era of rebellion was when the tumult broke out upon the act of violence offered by himself to Cheyt Sing; and upon the ground of that tumult, or rebellion as he calls it, he says he never would suffer him to enjoy any territory or any right whatever. We have fixed the period of the rebellion for which he is supposed to have exacted this fine;

this period of rebellion was after the exaction of the fine itself: so that the fine was not laid for the rebellion, but the rebellion broke out in consequence of the fine, and the violent measure accompanying it. We have established this, and the whole human race cannot shake it. He went up the country through malice, to revenge his own private wrongs, not those of the Company. He fixed 500,000*l.* as a mulct for an insult offered to himself, and then a rebellion broke out in consequence of his violence. This was the rebellion, and the only rebellion; it was Warren Hastings's rebellion, — a rebellion which arose from his own dreadful exaction, from his pride, from his malice and insatiable avarice, — a rebellion which arose from his abominable tyranny, from his lust of arbitrary power, and from his determination to follow the examples of Sujah Dowlah, Asoph ul Dowlah, Cossim Ali Khân, Aliverdy Khân, and all the gang of rebels who are the objects of his imitation.

"*My patience*," says he, "*was exhausted.*" Your Lordships have, and ought to have, a judicial patience. Mr. Hastings has none of any kind. I hold that patience is one of the great virtues of a governor; it was said of Moses, that he governed by patience, and that he was the meekest man upon earth. Patience is also the distinguishing character of a judge; and I think your Lordships, both with regard to us and with regard to him, have shown a great deal of it: we shall ever honor the quality, and if we pretend to say that we have had great patience in going through this trial, so your Lordships must have had great patience in hearing it. But this man's patience, as he himself tells you, was soon exhausted. "I considered," he says, "the light in which such

behavior would have been viewed by his native sovereign, and I resolved he should feel the power he had so long insulted. Forty or fifty lacs of rupees would have been a moderate fine for Sujah ul Dowlah to exact, — he who had demanded twenty-five lacs for the mere fine of succession, and received twenty in hand, and an increased rent tantamount to considerably above thirty lacs more; and therefore I rejected the offer of twenty, with which the Rajah would have compromised for his guilt when it was too late."

Now, my Lords, observe who his models were, when he intended to punish this man for an insult on himself. Did he consult the laws? Did he look to the Institutes of Timour, or to those of Genghis Khân? Did he look to the Hedaya, or to any of the approved authorities in this country? No, my Lords, he exactly followed the advice which Longinus gives to a great writer: — "Whenever you have a mind to elevate your mind, to raise it to its highest pitch, and even to exceed yourself, upon any subject, think how Homer would have described it, how Plato would have imagined it, and how Demosthenes would have expressed it; and when you have so done, you will then, no doubt, have a standard which will raise you up to the dignity of anything that human genius can aspire to." Mr. Hastings was calling upon himself, and raising his mind to the dignity of what tyranny could do, what unrighteous exaction could perform. He considered, he says, how much Sujah Dowlah would have exacted, and that he thinks would not be too much for him to exact. He boldly avows, — "I raised my mind to the elevation of Sujah Dowlah; I considered what Cossim Ali Khân would have done, or Aliverdy Khân, who murdered and robbed so

many. I had all this line of great examples before me, and I asked myself what fine they would have exacted upon such an occasion. But," says he, "Sujah Dowlah levied a fine of twenty lacs for a right of succession."

Good God! my Lords, if you are not appalled with the violent injustice of arbitrary proceedings, you must feel something humiliating at the gross ignorance of men who are in this manner playing with the rights of mankind. This man confounds a fine upon succession with a fine of penalty. He takes advantage of a defect in the technical language of our law, which, I am sorry to say, is not, in many parts, as correct in its distinctions and as wise in its provisions as the Mahometan law. We use the word *fine* in three senses: first, as a punishment and penalty; secondly, as a formal means of cutting off by one form the ties of another form, which we call levying a fine; and, thirdly, we use the word to signify a sum of money payable upon renewal of a lease or copyhold. The word has in each case a totally different sense; but such is the stupidity and barbarism of the prisoner, that he confounds these senses, and tells you Sujah Dowlah took twenty-five lacs as a fine from Cheyt Sing for the renewal of his zemindary, and therefore, as a punishment for his offences, he shall take fifty. Suppose any one of your Lordships, or of us, were to be fined for assault and battery, or for anything else, and it should be said, "You paid such a fine for a bishop's lease, you paid such a fine on the purchase of an estate, and therefore, now that you are going to be fined for a punishment, we will take the measure of the fine, not from the nature and quality of your offence, not

from the law upon the subject, or from your ability to pay, but the amount of a fine you paid some years ago for an estate shall be the measure of your punishment." My Lords, what should we say of such brutish ignorance, and such shocking confusion of ideas?

When this man had elevated his mind according to the rules of art, and stimulated himself to great things by great examples, he goes on to tell you that he rejected the offer of twenty lacs with which the Rajah would have compounded for his guilt when it was too late.

Permit me, my Lords, to say a few words here, by way of referring back all this monstrous heap of violence and absurdity to some degree of principle. Mr. Hastings having completely acquitted the Rajah of any other fault than contumacy, and having supposed even that to be only personal to himself, he thought a fine of 500,000*l.* would be a proper punishment. Now, when any man goes to exact a fine, it presupposes inquiry, charge, defence, and judgment. It does so in the Mahometan law; it does so in the Gentoo law; it does so in the law of England, in the Roman law, and in the law, I believe, of every nation under heaven, except in that law which resides in the arbitrary breast of Mr. Hastings, poisoned by the principles and stimulated by the examples of those wicked traitors and rebels whom I have before described. He mentions his intention of levying a fine; but does he make any mention of having charged the Rajah with his offences? It appears that he held an incredible quantity of private correspondence through the various Residents, through Mr. Graham, Mr. Fowke, Mr. Markham, Mr. Benn,

concerning the affairs of that country. Did he ever, upon this alleged contumacy, (for at present I put the rebellion out of the question,) inquire the progress of this personal affront offered to the Governor-General of Bengal? Did he ever state it to the Rajah, or did he call his vakeel before the Council to answer the charge? Did he examine any one person, or particularize a single fact, in any manner whatever? No. What, then, did he do? Why, my Lords, he declared himself the person injured, stood forward as the accuser, assumed the office of judge, and proceeded to judgment without a party before him, without trial, without examination, without proof. He thus directly reversed the order of justice. He determined to fine the Rajah when his own patience, as he says, was exhausted, not when justice demanded the punishment. He resolved to fine him in the enormous sum of 500,000*l*. Does he inform the Council of this determination? No. The Court of Directors? No. Any one of his confidants? No, not one of them, — not Mr. Palmer, not Mr Middleton, nor any of that legion of secretaries that he had; nor did he even inform Mr. Malcolm [Markham?] of his intentions, until he met him at Boglipore.

In regard to the object of his malice, we only know that many letters came from Cheyt Sing to Mr. Hastings, in which the unfortunate man endeavored to appease his wrath, and to none of which he ever gave an answer. He is an accuser preferring a charge and receiving apologies, without giving the party an answer, although he had a crowd of secretaries about him, maintained at the expense of the miserable people of Benares, and paid by sums of money drawn fraudulently from their pockets. Still not one word

of answer was given, till he had formed the resolution of exacting a fine, and had actually by torture made his victim's servant discover where his master's treasures lay, in order that he might rob him of all his family possessed. Are these the proceedings of a British judge? or are they not rather such as are described by Lord Coke (and these learned gentlemen, I dare say, will remember the passage; it is too striking not to be remembered) as "*the damned and damnable proceedings of a judge in hell*"? Such a judge has the prisoner at your bar proved himself to be. First he determines upon the punishment, then he prepares the accusation, and then by torture and violence endeavors to extort the fine.

My Lords, I must again beg leave to call your attention to his mode of proceeding in this business. He never entered any charge. He never answered any letter. Not that he was idle. He was carrying on a wicked and clandestine plot for the destruction of the Rajah, under the pretence of this fine; although the plot was not known, I verily believe, to any European at the time. He does not pretend that he told any one of the Company's servants of his intentions of fining the Rajah; but that some hostile project against him had been formed by Mr. Hastings was perfectly well known to the natives. Mr. Hastings tells you, that Cheyt Sing had a vakeel at Calcutta, whose business it was to learn the general transactions of our government, and the most minute particulars which could in any manner affect the interest of his employer.

I must here tell your Lordships, that there is no court in Asia, from the highest to the lowest, no petty sovereign, that does not both employ and re-

ceive what they call *hircarrahs*, or, in other words, persons to collect and to communicate political intelligence. These men are received with the state and in the rank of ambassadors; they have their place in the durbar; and their business, as authorized spies, is as well known there as that of ambassadors extraordinary and ordinary in the courts of Europe. Mr. Hastings had a public spy, in the person of the Resident, at Benares, and he had a private spy there in another person. The spies employed by the native powers had by some means come to the knowledge of Mr. Hastings's clandestine and wicked intentions towards this unhappy man, Cheyt Sing, and his unhappy country, and of his designs for the destruction and the utter ruin of both. He has himself told you, and he has got Mr. Anderson to vouch it, that he had received proposals for the sale of this miserable man and his country. And from whom did he receive these proposals, my Lords? Why, from the Nabob Asoph ul Dowlah, to whom he threatened to transfer both the person of the Rajah and his zemindary, if he did not redeem himself by some pecuniary sacrifice. Now Asoph ul Dowlah, as appears by the minutes on your Lordships' table, was at that time a bankrupt. He was in debt to the Company tenfold more than he could pay, and all his revenues were sequestered for that debt. He was a person of the last degree of indolence with the last degree of rapacity, — a man of whom Mr. Hastings declared, that he had wasted and destroyed by his misgovernment the fairest provinces upon earth, that not a person in his dominions was secure from his violence, and that even his own father could not enjoy his life and honor in safety under him. This avaricious bankrupt tyrant, who

had beggared and destroyed his own subjects, and could not pay his debts to the English government, was the man with whom Mr. Hastings was in treaty to deliver up Cheyt Sing and his country, under pretence of his not having paid regularly to the Company those customary payments which the tyrant would probably have never paid at all, if he had been put in possession of the country. This I mention to illustrate Mr. Hastings's plans of economy and finance, without considering the injustice and cruelty of delivering up a man to the hereditary enemy of his family.

It is known, my Lords, that Mr. Hastings, besides having received proposals for delivering up the beautiful country of Benares, that garden of God, as it is styled in India, to that monster, that rapacious tyrant, Asoph ul Dowlah, who with his gang of mercenary troops had desolated his own country like a swarm of locusts, had purposed likewise to seize Cheyt Sing's own patrimonial forts, which was nothing less than to take from him the residence of his women and his children, the seat of his honor, the place in which the remaining treasures and last hopes of his family were centred. By the Gentoo law, every lord or supreme magistrate is bound to construct and to live in such a fort. It is the usage of India, and is a matter of state and dignity, as well as of propriety, reason, and defence. It was probably an apprehension of being injured in this tender point, as well as a knowledge of the proposal made by the Nabob, which induced Cheyt Sing to offer to buy himself off; although it does not appear from any part of the evidence that he assigned any other reason than that of Mr. Hastings intending to exact from him

six lacs of rupees over and above his other exactions.

Mr. Hastings, indeed, almost acknowledges the existence of this plot against the Rajah, and his being the author of it. He says, without any denial of the fact, that the Rajah suspected some strong acts to be intended against him, and therefore asked Mr. Markham whether he could not buy them off and obtain Mr. Hastings's favor by the payment of 200,000*l.* Mr. Markham gave as his opinion, that 200,000*l.* was not sufficient; and the next day the Rajah offered 20,000*l.* more, in all 220,000*l.* The negotiation, however, broke off; and why? Not, as Mr. Markham says he conjectured, because the Rajah had learned that Mr. Hastings had no longer an intention of imposing these six lacs, or something to that effect, and therefore retracted his offer, but because that offer had been rejected by Mr. Hastings.

Let us hear what reason the man who was in the true secret gives for not accepting the Rajah's offer. "I rejected," says Mr. Hastings, "the offer of twenty lacs, with which the Rajah would have compromised for his guilt when it was too late." My Lords, he best knows what the motives of his own actions were. He says, the offer was made "when it was too late." Had he previously told the Rajah what sum of money he would be required to pay in order to buy himself off, or had he required him to name any sum which he was willing to pay? Did he, after having refused the offer made by the Rajah, say, "Come and make me a better offer, or upon such a day I shall declare that your offers are inadmissible"? No such thing appears. Your Lordships will further

remark, that Mr. Hastings refused the 200,000*l.* at a time when the exigencies of the Company were so pressing that he was obliged to rob, pilfer, and steal upon every side, — at a time when he was borrowing 40,000*l.* from Mr. Sulivan in one morning, and raising by other under-jobs 27,000*l.* more. In the distress [in ?] which his own extravagance and prodigality had involved him, 200,000*l.* would have been a weighty benefit, although derived from his villany; but this relief he positively refused, because, says he, "the offer came too late." From these words, my Lords, we may infer that there was a time when the offer would not have been "too late," — a period at which it would have been readily accepted. No such thing appears. There is not a trace upon your minutes, not a trace in the correspondence of the Company, to prove that the Rajah would at any time have been permitted to buy himself off from this complicated tyranny.

I have already stated a curious circumstance in this proceeding, to which I must again beg leave to direct your Lordships' attention. Does it anywhere appear in that correspondence, or in the testimony of Mr. Benn, of Mr. Markham, or of any human being, that Mr. Hastings had ever told Cheyt Sing with what sum he should be satisfied? There is evidence before you directly in proof that they did not know the amount. Not one person knew what his intention was, when he refused this 200,000*l.* For when he met Mr. Markham at Boglipore, and for the first time mentioned the sum of 500,000*l.* as the fine he meant to exact, Mr. Markham was astonished and confounded at its magnitude. He tells you this himself. It appears, then, that neither Cheyt Sing

nor the Resident at Benares (who ought to have been in the secret, if upon such an occasion secrecy is allowable) ever knew what the terms were. The Rajah was in the dark; he was left to feel, blindfold, how much money could relieve him from the iniquitous intentions of Mr. Hastings; and at last he is told that his offer comes too late, without having ever been told the period at which it would have been well-timed, or the amount it was proposed to take from him. Is this, my Lords, the proper way to adjudge a fine?

Your Lordships will now be pleased to advert to the manner in which he defends himself and these proceedings. He says, "I rejected this offer of twenty lacs, with which the Rajah would have compromised for his guilt when it was too late." If by these words he means too late to answer the purpose for which he has said the fine was designed, namely, the relief of the Company, the ground of his defence is absolutely false; for it is notorious that at the time referred to the Company's affairs were in the greatest distress.

I will next call your Lordships' attention to the projected sale of Benares to the Nabob of Oude. "If," says Mr. Hastings, "I ever talked of selling the Company's sovereignty over Benares to the Nabob of Oude, it was but *in terrorem;* and no subsequent act of mine warrants the supposition of my having seriously intended it." And in another place he says, "If I ever threatened" (your Lordships will remark, that he puts hypothetically a matter the reality of which he has got to be solemnly declared on an affidavit, and in a narrative to the truth of which he has deposed upon oath) — "if I ever

threatened," says he, "to dispossess the Rajah of his territories, it is no more than what my predecessors, without rebuke from their superiors, or notice taken of the expression, had wished and intended to have done to his father, even when the Company had no pretensions to the sovereignty of the country. It is no more than such a legal act of sovereignty as his behavior justified, and as I was justified in by the intentions of my predecessors. If I pretended to seize upon his forts, it was in full conviction that a dependant on the Company, guarantied, maintained, and protected in his country by the Company's arms, had no occasion for forts, had no right to them, and could hold them for no other than suspected and rebellious purposes. None of the Company's other zemindars are permitted to maintain them; and even our ally, the Nabob of the Carnatic, has the Company's troops in all his garrisons. Policy and public safety absolutely require it. What state could exist that allowed its inferior members to hold forts and garrisons independent of the superior administration? It is a solecism in government to suppose it."

Here, then, my Lords, he first declares that this was merely done *in terrorem;* that he never intended to execute the abominable act. And will your Lordships patiently endure that such terrific threats as these shall be hung by your Governor in India over the unhappy people that are subject to him and protected by British faith? Will you permit, that, for the purpose of extorting money, a Governor shall hold out the terrible threat of delivering a tributary prince and his people, bound hand and foot, into the power of their perfidious enemies?

The terror occasioned by threatening to take from him his forts can only be estimated by considering, that, agreeably to the religion and prejudices of Hindoos, the forts are the places in which their women are lodged, in which, according to their notions, their honor is deposited, and in which is lodged all the wealth that they can save against an evil day to purchase off the vengeance of an enemy. These forts Mr. Hastings says he intended to take, because the Rajah could hold them for no other than rebellious and suspected purposes. Now I will show your Lordships that the man who has the horrible audacity to make this declaration did himself assign to the Rajah these very forts. He put him in possession of them, and, when there was a dispute about the Nabob's rights to them on the one side and the Company's on the other, did confirm them to this man. The paper shall be produced, that you may have before your eyes the gross contradictions into which his rapacity and acts of arbitrary power have betrayed him. Thank God, my Lords, men that are greatly guilty are never wise. I repeat it, men that are greatly guilty are never wise. In their defence of one crime they are sure to meet the ghost of some former defence, which, like the spectre in Virgil, drives them back. The prisoner at your bar, like the hero of the poet, when he attempts to make his escape by one evasion, is stopped by the appearance of some former contradictory averment. If he attempts to escape by one door, there his criminal allegations of one kind stop him; if he attempts to escape at another, the facts and allegations intended for some other wicked purpose stare him full in the face.

Quacunque viam sibi fraude petivit,
Successum Dea dira negat.

The paper I hold in my hand contains Nundcomar's accusation of Mr. Hastings. It consists of a variety of charges; and I will first read to you what is said by Nundcomar of these forts, which it is pretended could be held for none but suspicious and rebellious purposes.

"At the time Mr. Hastings was going to Benares, he desired me to give him an account in writing of any lands which, though properly belonging to the Subah of Bahar, might have come under the dominion of Bulwant Sing, that they might be recovered from his son, Rajah Cheyt Sing. The purgunnahs of Kera, Mungrora, and Bidjegur were exactly in this situation, having been usurped by Bulwant Sing from the Subah of Bahar. I accordingly delivered to Mr. Hastings the accounts of them, from the entrance of the Company upon the dewanny to the year 1179 of the Fusseli era, stated at twenty-four lacs. Mr. Hastings said, 'Give a copy of this to Roy Rada Churn, that, if Cheyt Sing is backward in acknowledging this claim, Rada Churn may answer and confute him.' Why Mr. Hastings, when he arrived at Benares, and had called Rajah Cheyt Sing before him, left these countries still in the Rajah's usurpations it remains with Mr. Hastings to explain."

This is Nundcomar's charge. Here follows Mr. Hastings's reply.

"I recollect an information given me by Nundcomar concerning the pretended usurpations made by the Rajah of Benares, of the purgunnahs of Kera, Mungrora, and Bidjegur." (Your Lordships will recollect that Bidjegur is one of those very forts

which he declares could not be held but for suspicious and rebellious purposes.) "I do not recollect his mentioning it again, when I set out for Benares; neither did I ever intimate the subject, either to Cheyt Sing or his ministers, because I knew I could not support the claim; and to have made it and dropped it would have been in every sense dishonorable. Not that I passed by it with indifference or inattention. I took pains to investigate the foundation of this title, and recommended it to the particular inquiry of Mr. Vansittart, who was the Chief of Patna, at the time in which I received the first intimation. The following letter and voucher, which I received from him, contain a complete statement of this pretended usurpation."

These vouchers will answer our purpose, fully to establish that in his opinion the claim of the English government upon those forts was at that time totally unfounded, and so absurd that he did not even dare to mention it. This fort of Bidjegur, the most considerable in the country, and of which we shall have much to say hereafter, is the place in which Cheyt Sing had deposited his women and family. That fortress did Mr. Hastings himself give to this very man, deciding in his favor as a judge, upon an examination and after an inquiry: and yet he now declares that he had no right to it, and that he could not hold it but for wicked and rebellious purposes. But, my Lords, when he changed this language, he had resolved to take away these forts,— to destroy them,— to root the Rajah out of every place of refuge, out of every secure place in which he could hide his head, or screen himself from the rancor, revenge, avarice, and malice of his ruthless foe. He

was resolved to have them, although he had, upon the fullest conviction of the Rajah's right, given them to this very man, and put him into the absolute possession of them.

Again, my Lords, did he, when Cheyt Sing, in 1775, was put in possession by the *pottah* of the Governor-General and Council, which contains an enumeration of the names of all the places which were given up to him, and consequently of this among the rest, — did he, either before he put the question in Council upon that pottah, or afterwards, tell the Council they were going to put forts into the man's hands to which he had no right, and which could be held only for rebellious and suspected purposes? We refer your Lordships to the places in which all these transactions are mentioned, and you will there find Mr. Hastings took no one exception whatever against them; nor, till he was resolved upon the destruction of this unhappy man, did he ever so much as mention them. It was not till then that he discovers the possession of these forts by the Rajah to be *a solecism in government.*

After quoting the noble examples of Sujah Dowlah, and the other persons whom I have mentioned to you, he proceeds to say, that some of his predecessors, without any pretensions to sovereign authority, endeavored to get these forts into their possession; and "I was justified," says he, "by the intention of my predecessors." Merciful God! if anything can surpass what he has said before, it is this: "My predecessors, without any title of sovereignty, without any right whatever, wished to get these forts into their power; I therefore have a right to do what they wished to do; and I am justified, not by

the acts, but by the *intentions* of my predecessors." At the same time he knows that these predecessors had been reprobated by the Company for this part of their proceedings; he knew that he was sent there to introduce a better system, and to put an end to this state of rapacity. Still, whatever his predecessors *wished*, however unjust and violent it might be, when the sovereignty came into his hands, he maintains that he had a right to do all which they were desirous of accomplishing. Thus the enormities formerly practised, which the Company sent him to correct, became a sacred standard for his imitation.

Your Lordships will observe that he slips in the word *sovereignty* and forgets compact; because it is plain, and your Lordships must perceive it, that, wherever he uses the word sovereignty, he uses it to destroy the authority of all compacts; and accordingly in the passage now before us he declares that there is an invalidity in all compacts entered into in India, from the nature, state, and constitution of that empire. "From the disorderly form of its government," says he, "there is an invalidity in all compacts and treaties whatever." "Persons who had no treaty with the Rajah wished," says he, "to rob him: therefore I, who have a treaty with him, and call myself his sovereign, have a right to realize all their wishes."

But the fact is, my Lords, that his predecessors never did propose to deprive Bulwant Sing, the father of Cheyt Sing, of his zemindary. They, indeed, wished to have had the dewanny transferred to them, in the manner it has since been transferred to the Company. They wished to receive his rents, and to be made an intermediate party between him and the

Mogul emperor, his sovereign. These predecessors had entered into no compact with the man: they were negotiating with his sovereign for the transfer of the dewanny or stewardship of the country, which transfer was afterwards actually executed; but they were obliged to give the country itself back again to Bulwant Sing, with a guaranty against all the pretensions of Sujah Dowlah, who had tyrannically assumed an arbitrary power over it. This power the predecessors of Mr. Hastings might also have wished to assume; and he may therefore say, according to the mode of reasoning which he has adopted, — "Whatever they wished to do, but never succeeded in doing, I may and ought to do of my own will. Whatever fine Sujah Dowlah would have exacted I will exact. I will penetrate into that tiger's bosom, and discover the latent seeds of rapacity and injustice which lurk there, and I will make him the subject of my imitation."

These are the principles upon which, without accuser, without judge, without inquiry, he resolved to lay a fine of 500,000*l.* on Cheyt Sing!

In order to bind himself to a strict fulfilment of this resolution, he has laid down another very extraordinary doctrine. He has laid it down as a sort of canon, (in injustice and corruption,) that, whatever demand, whether just or unjust, a man declares his intention of making upon another, he should exact the precise sum which he has determined upon, and that, if he takes anything less, it is a proof of corruption. "I have," says he, "shown by this testimony that I never intended to make any communication to Cheyt Sing of taking less than the fifty lacs which in my own mind I had resolved to

exact." And he adds, — "I shall make my last and solemn appeal to the breast of every man who shall read this, whether it is likely, or morally possible, that I should have tied down my own future conduct to so decided a process and series of acts, if I had secretly intended to threaten, or to use a degree of violence, for no other purpose than to draw from the object of it a mercenary atonement for my own private emolument, and suffer all this tumult to terminate in an ostensible and unsubstantial submission to the authority which I represented."

He had just before said, "If I ever talked of selling the Company's sovereignty to the Nabob of Oude, it was only *in terrorem*." In the face of this assertion, he here gives you to understand he never held out anything *in terrorem*, but what he intended to execute. But we will show you that in fact he had reserved to himself a power of acting *pro re nata*, and that he intended to compound or not, just as answered his purposes upon this occasion. "I admit," he says, "that I did not enter it [the intention of fining Cheyt Sing] on the Consultations, because it was not necessary; even this plan itself of the fine was not a fixed plan, but to be regulated by circumstances, both as to the substantial execution of it and the mode." Now here is a man who has given it in a sworn narrative, that he did not intend to have a farthing less. Why? "Because I should have menaced and done as in former times has been done, — made great and violent demands which I reduce afterwards for my own corrupt purposes." Yet he tells you in the course of the same defence, but in another paper, that he had no fixed plan, that he did not know whether he

should exact a fine at all, or what should be his mode of executing it.

My Lords, what shall we say to this man, who declares that it would be a proof of corruption not to exact the full sum which he had threatened to exact, but who, finding that this doctrine would press hard upon him, and be considered as a proof of cruelty and injustice, turns round and declares he had no intention of exacting anything? What shall we say to a man who thus reserves his determination, who threatens to sell a tributary prince to a tyrant, and cannot decide whether he should take from him his forts and pillage him of all he had, whether he should raise 500,000*l.* upon him, whether he should accept the 220,000*l.* offered, (which, by the way, we never knew of till long after the whole transaction,) whether he should do any or all of those things, and then, by his own account, going up to Benares without having resolved anything upon this important subject?

My Lords, I will now assume the hypothesis that he at last discovered sufficient proof of rebellious practices; still even this gave him no right to adduce such rebellion in justification of resolutions which he had taken, of acts which he had done, before he knew anything of its existence. To such a plea we answer, and your Lordships will every one of you answer, — "You shall not by a subsequent discovery of rebellious practices, which you did not know at the time, and which you did not even believe, as you have expressly told us here, justify your conduct prior to that discovery." If the conspiracy which he falsely imputes to Cheyt Sing, if that wild scheme of driving the English out of India, had existed, think

in what miserable circumstances we stand as prosecutors, and your Lordships as judges, if we admit a discovery to be pleaded in justification of antecedent acts founded upon the assumed existence of that which he had no sort of proof, knowledge, or belief of!

My Lords, we shall now proceed to another circumstance, not less culpable in itself, though less shocking to your feelings, than those to which I have already called your attention: a circumstance which throws a strong presumption of guilt upon every part of the prisoner's conduct. Having formed all these infernal plots in his mind, but uncertain which of them he should execute, uncertain what sums of money he should extort, whether he should deliver up the Rajah to his enemy or pillage his forts, he goes up to Benares; but he first delegates to himself all the powers of government, both civil and military, in the countries which he was going to visit.

My Lords, we have asserted in our charge that this delegation and division of power was illegal. He invested *himself* with this authority; for *he* was the majority in the Council: Mr. Wheler's consent or dissent signifying nothing. He gave himself powers which the act of Parliament did not give him. He went up to Benares with an illegal commission, civil and military; and to prove this I shall beg leave to read the provisions of the act of Parliament. I shall show what the creature ought to be, by showing the law of the creator: what the legislature of Great Britain meant that Governor Hastings should be, not what he made himself.

[*Mr. Burke then read the seventh section of the act.*]

Now we do deny that there is by this act given, or that under this act there can be given, to the government of India, a power of dividing its unity into two parts, each of which shall separately be a unity and possess the power given to the whole. Yet, my Lords, an agreement was made between him and Mr. Wheler, that he (Mr. Hastings) should have every power, civil and military, in the upper provinces, and that Mr. Wheler should enjoy equal authority in the lower ones.

Now, to show you that it is impossible for such an agreement to be legal, we must refer you to the constitution of the Company's government. The whole power is vested in the Council, where all questions are to be decided by a majority of voices, and the members are directed to record in the minutes of their proceedings not only the questions decided, but the grounds upon which each individual member founds his vote. Now, although the Council is competent to delegate its authority for any *specific* purpose to any servant of the Company, yet to admit that it can delegate its authority *generally*, without reserving the means of deliberation and control, would be to change the whole constitution. By such a proceeding the government may be divided into a number of independent governments, without a common deliberative Council and control. This deliberative capacity, which is so strictly guarded by the obligation of recording its consultations, would be totally annihilated, if the Council divided itself into independent parts, each acting according to its own discretion. There is no similar instance in law,

there is no similar instance in policy. The conduct of these men implies a direct contradiction; and you will see, by the agreement they made to support each other, that they were themselves conscious of the illegality of this proceeding.

After Mr. Hastings had conferred absolute power upon himself during his stay in the upper provinces by an order of Council, (of which Council he was himself a majority,) he entered the following minute in the Consultations. "The Governor-General delivers in the following minute. In my minute which I laid before the court on the 21st May, I expressed the satisfaction with which I could at this juncture leave the Presidency, from the mutual confidence which was happily established between Mr. Wheler and me. I now readily repeat that sentiment, and observe with pleasure that Mr. Wheler confirms it. Before my departure, it is probable that we shall in concert have provided at the board for almost every important circumstance that can eventually happen during my absence; but if any should occur for which no previous provision shall have been made in the resolutions of the board, Mr. Wheler may act with immediate decision, and with the fullest confidence of my support, in all such emergencies, as well as in conducting the ordinary business of the Presidency, and in general in all matters of this government, excepting those which may specially or generally be intrusted to me. Mr. Wheler during my absence may consider himself as possessed of the full powers of the Governor-General and Council of this government, as in effect he is by the constitution; and he may be assured, that, so far as my sanction and concurrence shall be, or be deemed,

necessary to the confirmation of his measures, he shall receive them."

Now here is a compact of iniquity between these two duumvirs. They each give to the other the full, complete, and perfect powers of the government; and in order to secure themselves against any obstacles that might arise, they mutually engage to ratify each other's acts: and they say this is not illegal, because Lord Cornwallis has had such a deputation. I must first beg leave to observe that no man can justify himself in doing any illegal act by its having been done by another; much less can he justify his own illegal act by pleading an act of the same kind done subsequently to his act, because the latter may have been done in consequence of his bad example. Men justify their acts in two ways, — by law and by precedent; the former asserts the right, the latter presumes it from the example of others. But can any man justify an act, because ten or a dozen years after another man has done the same thing? Good heavens! was there ever such a doctrine before heard? Suppose Lord Cornwallis to have done wrong; suppose him to have acted illegally; does that clear the prisoner at your bar? No: on the contrary, it aggravates his offence; because he has afforded others an example of corrupt and illegal conduct. But if even Lord Cornwallis had preceded, instead of following him, the example would not have furnished a justification. There is no resemblance in the cases. Lord Cornwallis does not hold his government by the act of 1773, but by a special act made afterwards; and therefore to attempt to justify acts done under one form of appointment by acts done under another form is to the last

degree wild and absurd. Lord Cornwallis was going to conduct a war of great magnitude, and was consequently trusted with extraordinary powers. He went in the two characters of governor and commander-in-chief; and yet the legislature was sensible of the doubtful validity of a Governor-General's carrying with him the whole powers of the Council. But Mr. Hastings was not commander-in-chief, when he assumed the whole military as well as civil power. Lord Cornwallis, as I have just said, was not only commander-in-chief, but was going to a great war, where he might have occasion to treat with the country powers in a civil capacity; and yet so doubtful was the legislature upon this point, that they passed a special act to confirm that delegation, and to give him a power of acting under it.

My Lords, we do further contend that Mr. Hastings had no right to assume the character of commander-in-chief; for he was no military man, nor was he appointed by the Company to that trust. His assumption of the military authority was a gross usurpation. It was an authority to which he would have had no right, if the whole powers of government were vested in him, and he had carried his Council with him on his horse. If, I say, Mr. Hastings had his Council on his crupper, he could neither have given those powers to himself nor made a partition of them with Mr. Wheler. Could Lord Cornwallis, for instance, who carried with him the power of commander-in-chief, and authority to conclude treaties with all the native powers, could he, I ask, have left a Council behind him in Calcutta with equal powers, who might have concluded treaties in direct contradiction to those in which he was engaged? Clearly

he could not; therefore I contend that this partition of power, which supposes an integral authority in each counsellor, is a monster that cannot exist. This the parties themselves felt so strongly that they were obliged to have recourse to a stratagem scarcely less absurd than their divided assumption of power. They entered into a compact to confirm each other's acts, and to support each other in whatever they did: thus attempting to give their separate acts a legal form.

I have further to remark to your Lordships, what has just been suggested to me, that it was for the express purpose of legalizing Lord Cornwallis's delegation that he was made commander-in-chief as well as Governor-General by the act.

The next plea urged by Mr. Hastings is convenience. "It was *convenient*," he says, "for me to do this." I answer, No person acting with delegated power can delegate that power to another. *Delegatus non potest delegare* is a maxim of law. Much less has he a right to supersede the law, and the principle of his own delegation and appointment, upon any idea of convenience. But what was the conveniency? There was no one professed object connected with Mr. Hastings's going up to Benares which might not as well have been attained in Calcutta. The only difference would have been, that in the latter case he must have entered some part of his proceedings upon the Consultations, whether he wished it or not. If he had a mind to negotiate with the Vizier, he had a resident at his court, and the Vizier had a resident in Calcutta. The most solemn treaties had often been made without any Governor-General carrying up a delegation of civil and military power. If it

had been his object to break treaties, he might have broken them at Calcutta, as he broke the treaty of Chunar. Is there an article in that treaty that he might not as well have made at Calcutta? Is there an article that he broke (for he broke them all) that he could not have broken at Calcutta? So that, whether pledging or breaking the faith of the Company, he might have done both or either without ever stirring from the Presidency.

I can conceive a necessity so urgent as to supersede all laws; but I have no conception of a necessity that can require two governors-general, each forming separately a *supreme* council. Nay, to bring the point home to him,—if he had a mind to make Cheyt Sing to pay a fine, as he called it, he could have made him do that at Calcutta as well as at Benares. He had before contrived to make him pay all the extra demands that were imposed upon him; and he well knew that he could send Colonel Camac, or somebody else, to Benares, with a body of troops to enforce the payment. Why, then, did he go to try experiments there in his own person? For this plain reason: that he might be enabled to put such sums in his own pocket as he thought fit. It was not and could not be for any other purpose; and I defy the wit of man to find out any other.

He says, my Lords, that Cheyt Sing might have resisted, and that, if he had not been there, the Rajah might have fled with his money, or raised a rebellion for the purpose of avoiding payment. Why, then, we ask, did he not send an army? We ask, whether Mr. Markham, with an army under the command of Colonel Popham, or Mr. Fowke, or any other Resident, was not much more likely to exact

a great sum of money than Mr. Hastings without an army? My Lords, the answer must be in the affirmative; it is therefore evident that no necessity could exist for his presence, and that his presence and conduct occasioned his being defeated in this matter.

We find this man, armed with an illegal commission, undertaking an enterprise which he has since said was perilous, which proved to be perilous, and in which, as he has told us himself, the existence of the British empire in India was involved. The talisman, (your Lordships will remember his use of the word,) that charm which kept all India in order, which kept mighty and warlike nations under the government of a few Englishmen, would, I verily believe, have been broken forever, if he, or any other Governor-General, good or bad, had been killed. Infinite mischiefs would have followed such an event. The situation in which he placed himself, by his own misconduct, was pregnant with danger; and he put himself in the way of that danger without having any armed force worth mentioning, although he has acknowledged that Cheyt Sing had then an immense force. In fact, the demand of two thousand cavalry proves that he considered the Rajah's army to be formidable; yet, notwithstanding this, with four companies of sepoys, poorly armed and ill provisioned, he went to invade that fine country, and to force from its sovereign a sum of money, the payment of which he had reason to think would be resisted. He thus rashly hazarded his own being and the being of all his people.

"But," says he, "I did not imagine the Rajah intended to go into rebellion, and therefore went un-

armed." Why, then, was his presence necessary? Why did he not send an order from Calcutta for the payment of the money? But what did he do, when he got there? "I was alarmed," says he; "for the Rajah surrounded my budgero with two thousand men: that indicated a hostile disposition." Well, if he did so, what precaution did Mr. Hastings take for his own safety? Why, none, my Lords, none. He must therefore have been either a madman, a fool, or a determined declarer of falsehood. Either he thought there was no danger, and therefore no occasion for providing against it, or he was the worst of governors, the most culpably improvident of his personal safety, of the lives of his officers and men, and of his country's honor.

The demand of 500,000*l.* was a thing likely to irritate the Rajah and to create resistance. In fact, he confesses this. Mr. Markham and he had a discourse upon that subject, and agreed to arrest the Rajah, because they thought the enforcing this demand might drive him to his forts, and excite a rebellion in the country. He therefore knew there was danger to be apprehended from this act of violence. And yet, knowing this, he sent one unarmed Resident to give the orders, and four unarmed companies of sepoys to support him. He provokes the people, he goads them with every kind of insult added to every kind of injury, and then rushes into the very jaws of danger, provoking a formidable foe by the display of a puny, insignificant force.

In expectation of danger, he seized the person of the Rajah, and he pretends that the Rajah suffered no disgrace from his arrest. But, my Lords, we have proved, what was stated by the Rajah, and was

well known to Mr. Hastings, that to imprison a person of elevated station, in that country, is to subject him to the highest dishonor and disgrace, and would make the person so imprisoned utterly unfit to execute the functions of government ever after.

I have now to state to your Lordships a transaction which is worse than his wantonly playing with the safety of the Company, worse than his exacting sums of money by fraud and violence. My Lords, the history of this transaction must be prefaced by describing to your Lordships the duty and privileges attached to the office of *Naib*. A Naib is an officer well known in India, as the administrator of the affairs of any government, whenever the authority of the regular holder is suspended. But, although the Naib acts only as a deputy, yet, when the power of the principal is totally superseded, as by imprisonment or otherwise, and that of the Naib is substituted, he becomes the actual sovereign, and the principal is reduced to a mere pensioner. I am now to show your Lordships whom Mr. Hastings appointed as Naib to the government of the country, after he had imprisoned the Rajah.

Cheyt Sing had given him to understand through Mr. Markham, that he was aware of the design of suspending him, and of placing his government in the hands of a Naib whom he greatly dreaded. This person was called Ussaun Sing; he was a remote relation of the family, and an object of their peculiar suspicion and terror. The moment Cheyt Sing was arrested, he found that his prophetic soul spoke truly; for Mr. Hastings actually appointed this very man to be his master. And who was this man? We are

told by Mr. Markham, in his evidence here, that he was a man who had dishonored his family, — he was the disgrace of his house, — that he was a person who could not be trusted; and Mr. Hastings, in giving Mr. Markham full power afterwards to appoint Naibs, expressly excepted this Ussaun Sing from all trust whatever, as a person totally unworthy of it. Yet this Ussaun Sing, the disgrace and calamity of his family, an incestuous adulterer, and a supposed issue of a guilty connection, was declared Naib. Yes, my Lords, this degraded, this wicked and flagitious character, the Rajah's avowed enemy, was, in order to heighten the Rajah's disgrace, to embitter his ruin, to make destruction itself dishonorable as well as destructive, appointed this [his?] Naib. Thus, when Mr. Hastings had imprisoned the Rajah, in the face of his subjects, and in the face of all India, without fixing any term for the duration of his imprisonment, he delivered up the country to a man whom he knew to be utterly undeserving, a man whom he kept in view for the purpose of frightening the Rajah, and whom he was obliged to depose on account of his misconduct almost as soon as he had named him, and to exclude specially from all kind of trust. We have heard of much tyranny, avarice, and insult in the world; but such an instance of tyranny, avarice, and insult combined has never before been exhibited.

We are now come to the last scene of this flagitious transaction. When Mr. Hastings imprisoned the Rajah, he did not renew his demand for the 500,000*l.*, but he exhibited a regular charge of various pretended delinquencies against him, digested into heads, and he called on him, in a dilatory, ir-

regular way of proceeding, for an answer. The man, under every difficulty and every distress, gave an answer to every particular of the charge, as exact and punctilious as could have been made to articles of impeachment in this House.

I must here request your Lordships to consider the order of these proceedings. Mr. Hastings, having determined upon the utter ruin and destruction of this unfortunate prince, endeavored, by the arrest of his person, by a contemptuous disregard to his submissive applications, by the appointment of a deputy who was personally odious to him, and by the terror of still greater insults, he endeavored, I say, to goad him on to the commission of some acts of resistance sufficient to give a color of justice to that last dreadful extremity to which he had resolved to carry his malignant rapacity. Failing in this wicked project, and studiously avoiding the declaration of any terms upon which the Rajah might redeem himself from these violent proceedings, he next declared his intention of seizing his forts, the depository of his victim's honor, and of the means of his subsistence. He required him to deliver up his accounts and accountants, together with all persons who were acquainted with the particulars of his effects and treasures, for the purpose of transferring those effects to such persons as he (Mr. Hastings) chose to nominate.

It was at this crisis of aggravated insult and brutality that the indignation which these proceedings had occasioned in the breasts of the Rajah's subjects burst out into an open flame. The Rajah had retired to the last refuge of the afflicted, to offer up prayers to his God and our God, when a vile *chubdar*,

or tipstaff, came to interrupt and insult him. His alarmed and loyal subjects felt for a beloved sovereign that deep interest which we should all feel, if our sovereign were so treated. What man with a spark of loyalty in his breast, what man regardful of the honor of his country, when he saw his sovereign imprisoned, and so notorious a wretch appointed his deputy, could be a patient witness of such wrongs? The subjects of this unfortunate prince did what we should have done, — what all who love their country, who love their liberty, who love their laws, who love their property, who love their sovereign, would have done on such an occasion. They looked upon him as their sovereign, although degraded. They were unacquainted with any authority superior to his, and the phantom of tyranny which performed these oppressive acts was unaccompanied by that force which justifies submission by affording the plea of necessity. An unseen tyrant and four miserable companies of sepoys executed all the horrible things that we have mentioned. The spirit of the Rajah's subjects was roused by their wrongs, and encouraged by the contemptible weakness of their oppressors. The whole country rose up in rebellion, and surely in justifiable rebellion. Every writer on the Law of Nations, every man that has written, thought, or felt upon the affairs of government, must write, know, think, and feel, that a people so cruelly scourged and oppressed, both in the person of their chief and in their own persons, were justified in their resistance. They were roused to vengeance, and a short, but most bloody war followed.

We charge the prisoner at your bar with all the consequences of this war. We charge him with the

murder of our sepoys, whom he sent unarmed to such a dangerous enterprise. We charge him with the blood of every man that was shed in that place; and we call him, as we have called him, a tyrant, an oppressor, and a murderer. We call him murderer in the largest and fullest sense of the word; because he was the cause of the murder of our English officers and sepoys, whom he kept unarmed, and unacquainted with the danger to which they would be exposed by the violence of his transactions. He sacrificed to his own nefarious views every one of those lives, as well as the lives of the innocent natives of Benares, whom he designedly drove to resistance by the weakness of the force opposed to them, after inciting them by tyranny and insult to that display of affection towards their sovereign which is the duty of all good subjects.

My Lords, these are the iniquities which we have charged upon the prisoner at your bar; and I will next call your Lordships' attention to the manner in which these iniquities have been pretended to be justified. You will perceive a great difference in the manner in which this prisoner is tried, and of which he so much complains, and the manner in which he dealt with the unfortunate object of his oppression. The latter thus openly appeals to his accuser. "You are," says he, "upon the spot. It is happy for me that you are so. You can now inquire into my conduct." Did Mr. Hastings so inquire? No, my Lords, we have not a word of any inquiry; he even found fresh matter of charge in the answer of the Rajah, although, if there is any fault in this answer, it is its extremely humble and submissive tone. If there was anything faulty in his manner, it was his

extreme humility and submission. It is plain he would have almost submitted to anything. He offered, in fact, 220,000*l.* to redeem himself from greater suffering. Surely no man going into rebellion would offer 220,000*l.* of the treasure which would be so essential to his success; nor would any government that was really apprehensive of rebellion call upon the suspected person to arm and discipline two thousand horse. My Lords, it is evident no such apprehensions were entertained; nor was any such charge made until punishment had commenced. A vague accusation was then brought forward, which was answered by a clear and a natural defence, denying some parts of the charge, evading and apologizing for others, and desiring the whole to be inquired into. To this request the answer of the Governor-General was, "That won't do; you shall have no inquiries." And why? "Because I have arbitrary power, you have no rights, and I can and will punish you without inquiry." I admit, that, if his will is the law, he may take [make?] the charge before punishment or the punishment before the charge, or he may punish without making any charge. If his will is the law, all I have been saying amounts to nothing. But I have endeavored to let your Lordships see that in no country upon the earth is the will of a despot law. It may produce wicked, flagitious, tyrannical acts; but in no country is it law.

The duty of a sovereign in cases of rebellion, as laid down in the Hedaya, agrees with the general practice in India. It was usual, except in cases of notorious injustice and oppression, whenever a rebellion or a suspicion of a rebellion existed, to admonish the rebellious party and persuade him to

return to his duty. Causes of complaint were removed and misunderstandings explained, and, to save the effusion of blood, severe measures were not adopted until they were rendered indispensable. This wise and provident law is or ought to be the law in all countries: it was in fact the law in that country, but Mr. Hastings did not attend to it. His unfortunate victim was goaded to revolt and driven from his subjects, although he endeavored by message after message to reconcile this cruel tyrant to him. He is told in reply, "You have shed the blood of Englishmen, and I will never be reconciled to you." Your Lordships will observe that the reason he gives for such an infernal determination (for it cannot be justly qualified by any other word) is of a nature to make tyranny the very foundation of our government. I do not say here upon what occasion people may or may not resist; but surely, if ever there was an occasion on which people, from love to their sovereign and regard to their country, might take up arms, it was this. They saw a tyrant violent in his demands and weak in his power. They saw their prince imprisoned and insulted, after he had made every offer of submission, and had laid his turban three times in the lap of his oppressor. They saw him, instead of availing himself of the means he possessed of cutting off his adversary, (for the life of Mr. Hastings was entirely in his power,) betaking himself to flight. They then thronged round him, took up arms in his defence, and shed the blood of some of his insulters. Is this resistance, so excited, so provoked, a plea for irreconcilable vengeance?

I must beg pardon for having omitted to lay before your Lordships in its proper place a most extraor-

dinary paper, which will show you in what manner judicial inquiries are conducted, upon what grounds charges are made, by what sort of evidence they are supported, and, in short, to what perils the lives and fortunes of men are subjected in that country. This paper is in the printed Minutes, page 1608. It was given in agreeably to the retrograde order which they have established in their judicial proceedings. It was produced to prove the truth of a charge of rebellion which was made some months before the paper in evidence was known to the accuser.

"*To the Honorable Warren Hastings.*

"SIR,— About the month of November last, I communicated to Mr. Markham the substance of a conversation said to have passed between Rajah Cheyt Sing and Saadut Ali, and which was reported to me by a person in whom I had some confidence. The mode of communicating this intelligence to you I left entirely to Mr. Markham. In this conversation, which was private, the Rajah and Saadut Ali were said to have talked of Hyder Ali's victory over Colonel Baillie's detachment, to have agreed that they ought to seize this opportunity of consulting their own interest, and to have determined to watch the success of Hyder's arms. Some days after this conversation was said to have happened, I was informed by the same person that the Rajah had received a message from one of the Begums at Fyzabad, (I think it was from Sujah ul Dowlah's widow,) advising him not to comply with the demands of government, and encouraging him to expect support in case of his resisting. This also, I believe, I communicated to Mr. Markham; but not being perfectly certain, I now

think it my duty to remove the possibility of your remaining unacquainted with a circumstance which may not be unconnected with the present conduct of the Rajah."

Here, then, is evidence of evidence given to Mr. Markham by Mr. Balfour, from Lucknow, in the month of November, 1781, long after the transaction at Benares. But what was this evidence? "I communicated," he says, "the substance of a conversation said to have passed." Observe, *said:* not a conversation that had passed to his knowledge or recollection, but what his informant said had passed. He adds, this conversation was reported to him by a person whom he won't name, but in whom, he says, he had some confidence. This anonymous person, in whom he had put some confidence, was not himself present at the conversation; he only reports to him that it was *said* by somebody else that such a conversation had taken place. This conversation, which somebody told Colonel Balfour he had heard was said by somebody to have taken place, if true, related to matters of great importance; still the mode of its communication was left to Mr. Markham, and that gentleman did not bring it forward till some months after. Colonel Balfour proceeds to say,—"Some days after this conversation was said to have happened," (your Lordships will observe it is always, "was said to have happened,") "I was informed by the same person that the Rajah had received a message from one of the Begums at Fyzabad, (I think it was from Sujah ul Dowlah's widow,) advising him not to comply with the demands of government, and encouraging him to expect support in case of his resisting."

He next adds, — "This also, I believe," (observe, he says he is not quite sure of it,) "I communicated to Mr. Markham; but not being perfectly certain," (of a matter the immediate knowledge of which, if true, was of the highest importance to his country,) "I now think it my duty to remove the possibility of your remaining unacquainted with a circumstance which may not be unconnected with the present conduct of the Rajah."

Here is a man that comes with information long after the fact deposed to, and, after having left to another the communication of his intelligence to the proper authority, that other neglects the matter. No letter of Mr. Markham's appears, communicating any such conversation to Mr. Hastings: and, indeed, why he did not do so must appear very obvious to your Lordships; for a more contemptible, ridiculous, and absurd story never was invented. Does Mr. Balfour come forward and tell him who his informant was? No. Does he say, "He was an informant whom I dare not name, upon account of his great consequence, and the great confidence I had in him"? No. He only says slightly, "I have some confidence in him." It is upon this evidence of a reporter of what another is *said* to have *said*, that Mr. Hastings and his Council rely for proof, and have thought proper to charge the Rajah with having conceived rebellious designs soon after the time when Mr. Hastings had declared his belief that no such designs had been formed.

Mr. Hastings has done with his charge of rebellion what he did with his declaration of arbitrary power: after he had vomited it up in one place, he returns to it in another. He here declares (after he had

recorded his belief that no rebellion was ever intended) that Mr. Markham was in possession of information which he might have believed, if it had been communicated to him. Good heavens! when you review all these circumstances, and consider the principles upon which this man was tried and punished, what must you think of the miserable situation of persons of the highest rank in that country, under the government of men who are disposed to disgrace and ruin them in this iniquitous manner!

Mr. Balfour is in Europe, I believe. How comes it that he is not produced here to tell your Lordships who was his informer, and what he knows of the transaction? They have not produced him, but have thought fit to rely upon this miserable, beggarly semblance of evidence, the very production of which was a crime, when brought forward for the purpose of giving color to acts of injustice and oppression. If you ask, Who is this Mr. Balfour? He is a person who was a military collector of revenue in the province of Rohilcund: a country now ruined and desolated, but once the garden of the world. It was from the depth of that horrible devastating system that he gave this ridiculous, contemptible evidence, which if it can be equalled, I shall admit that there is not one word we have said that you ought to attend to.

Your Lordships are now enabled to sum up the amount and estimate the result of all this iniquity. The Rajah himself is punished, he is ruined and undone; but the 500,000*l.* is not gained. He has fled his country; but he carried his treasures with him. His forts are taken possession of; but there was nothing found in them. It is the report of

the country, and is so stated by Mr. Hastings, that he carried away with him in gold and silver to the value of about 400,000*l.*; and thus that sum was totally lost, even as an object of plunder, to the Company. The author of the mischief lost his favorite object by his cruelty and violence. If Mr. Hastings had listened to Cheyt Sing at first, — if he had answered his letters, and dealt civilly with him, — if he had endeavored afterwards to compromise matters, — if he had *told* him what his demands were, — if, even after the rebellion had broken out, he had demanded and exacted a fine, — the Company would have gained 220,000*l.* at least, and perhaps a much larger sum, without difficulty. They would not then have had 400,000*l.* carried out of the country by a tributary chief, to become, as we know that sum has become, the plunder of the Mahrattas and our other enemies. I state to you the account of the profit and loss of tyranny: take it as an account of profit and loss; forget the morality, forget the law, forget the policy; take it, I say, as a matter of profit and loss. Mr. Hastings lost the subsidy; Mr. Hastings lost the 220,000*l.* which was offered him, and more that he might have got. Mr. Hastings lost it all; and the Company lost the 400,000*l.* which he meant to exact. It was carried from the British dominions to enrich its enemies forever.

This man, my Lords, has not only acted thus vindictively himself, but he has avowed the principle of revenge as a general rule of policy, connected with the security of the British government in India. He has dared to declare, that, if a native once draws his sword, he is not to be pardoned; that you never are to forgive any man who has killed an English soldier.

You are to be implacable and resentful; and there is no maxim of tyrants, which, upon account of the supposed weakness of your government, you are not to pursue. Was this the conduct of the Mogul conquerors of India? and must this *necessarily* be the policy of their Christian successors? I pledge myself, if called upon, to prove the contrary. I pledge myself to produce, in the history of the Mogul empire, a series of pardons and amnesties for rebellions, from its earliest establishments, and in its most distant provinces.

I need not state to your Lordships what you know to be the true principles of British policy in matters of this nature. When there has been provocation, you ought to be ready to listen to terms of reconciliation, even after war has been made. This you ought to do, to show that you are placable; such policy as this would doubtless be of the greatest benefit and advantage to you. Look to the case of Sujah Dowlah. You had, in the course of a war with him, driven him from his country; you had not left him in possession of a foot of earth in the world. The Mogul was his sovereign, and, by his authority, it was in your power to dispose of the vizierate, and of every office of state which Sujah Dowlah held under the emperor: for he hated him mortally, and was desirous of dispossessing him of everything. What did you do? Though he had shed much English blood, you reëstablished him in all his power, you gave him more than he before possessed; and you had no reason to repent your generosity. Your magnanimity and justice proved to be the best policy, and was the subject of admiration from one end of India to the other. But Mr. Hastings had other

maxims and other principles. You are weak, he says, and therefore you ought never to forgive. Indeed, Mr. Hastings never does forgive. The Rajah was weak, and he persecuted him; Mr. Hastings was weak, and he lost his prey. He went up the country with the rapacity, but not with the talons and beak, of a vulture. He went to look for plunder; but he was himself plundered, the country was ravaged, and the prey escaped.

After the escape of Cheyt Sing, there still existed in one corner of the country some further food for Mr. Hastings's rapacity. There was a place called Bidjegur, one of those forts which Mr. Hastings declared could not be safely left in the possession of the Rajah; measures were therefore taken to obtain possession of this place, soon after the flight of its unfortunate proprietor. And what did he find in it? A great and powerful garrison? No, my Lords: he found in it the wives and family of the Rajah; he found it inhabited by two hundred women, and defended by a garrison of eunuchs and a few feeble militia-men. This fortress was supposed by him to contain some money, which he hoped to lay hold of when all other means of rapacity had escaped him. He first sends (and you have it on your minutes) a most cruel, most atrocious, and most insulting message to these unfortunate women; one of whom, a principal personage of the family, we find him in the subsequent negotiation scandalizing in one minute, and declaring to be a woman of respectable character in the next, — treating her by turns as a prostitute and as an amiable woman, as best suited the purposes of the hour. This woman, with two hundred of her sex, he found in Bidjegur. Whatever money

they had was their own property; and as such Cheyt Sing, who had visited the place before his flight, had left it for their support, thinking that it would be secure to them as their property, because they were persons wholly void of guilt, as they must needs have been. This money the Rajah might have carried off with him; but he left it them, and we must presume that it was their property; and no attempt was ever made by Mr. Hastings to prove otherwise. They had no other property that could be found. It was the only means of subsistence for themselves, their children, their domestics, and dependants, and for the whole female part of that once illustrious and next to royal family.

But to proceed. A detachment of soldiers was sent to seize the forts [fort?]. Soldiers are habitually men of some generosity; even when they are acting in a bad cause, they do not wholly lose the military spirit. But Mr. Hastings, fearing that they might not be animated with the same lust of plunder as himself, stimulated them to demand the plunder of the place, and expresses his hopes that no composition would be made with these women, and that not one shilling of the booty would be allowed them. He does not trust to their acting as soldiers who have their fortunes to make; but he stimulates and urges them not to give way to the generous passions and feelings of men.

He thus writes from Benares, the 22d of October, 1781, ten o'clock in the morning. "I am this instant favored with yours of yesterday; mine to you of the same date has before this time acquainted you with my resolutions and sentiments respecting the Ranny. I think every demand she has made to you,

except that of safety and respect for her person, is unreasonable. If the reports brought to me are true, your rejecting her offers, or any negotiation with her, would soon obtain you possession of the fort upon your own terms. I apprehend that she will contrive to defraud the captors of a considerable part of the booty by being suffered to retire without examination; but this is your consideration, and not mine. I should be sorry that your officers and soldiers lost any part of the reward to which they are so well entitled; but I cannot make any objection, as you must be the best judge of the expediency of the promised indulgence to the Ranny. What you have engaged for I will certainly ratify; but as to permitting the Ranny to hold the purgunnah of Hurluk, or any other in the zemindary, without being subject to the authority of the zemindar, or any lands whatever, or indeed making any conditions with her for a provision, I will never consent to it."

My Lords, you have seen the principles upon which this man justifies his conduct. Here his real nature, character, and disposition break out. These women had been guilty of no rebellion; he never charged them with any crime but that of having wealth; and yet you see with what ferocity he pursues everything that belonged to the destined object of his cruel, inhuman, and more than tragic revenge. "If," says he, "you have made an agreement with them, and will insist upon it, I will keep it; but if you have not, I beseech you not to make any. Don't give them anything; suffer no stipulations whatever of a provision for them. The capitulation I will ratify, provided it contains no article of future provision for them." This he positively forbade; so that his

bloodthirsty vengeance would have sent out these two hundred innocent women to starve naked in the world.

But he not only declares that the money found in the fort is the soldiers', he adds, that he should be sorry, if they lost a shilling of it. So that you have here a man not only declaring that the money was theirs, directly contrary to the Company's positive orders upon other similar occasions, and after he had himself declared that prize-money was poison to soldiers, but directly inciting them to insist upon their right to it.

A month had been allowed by proclamation for the submission of all persons who had been in rebellion, which submission was to entitle them to indemnity. But, my Lords, he endeavored to break the public faith with these women, by inciting the soldiers to make no capitulation with them, and thus depriving them of the benefit of the proclamation, by preventing their voluntary surrender.

[*Mr. Burke here read the proclamation.*]

From the date of this proclamation it appears that the surrender of the fort was clearly within the time given to those who had been guilty of the most atrocious acts of rebellion to repair to their homes and enjoy an indemnity. These women had never quitted their homes, nor had they been charged with rebellion, and yet they were cruelly excluded from the general indemnity; and after the army had taken unconditional possession of the fort, they were turned out of it, and ordered to the quarters of the commanding officer, Major Popham. This officer had received from Mr. Hastings a power to rob them, a

power to plunder them, a power to distribute the plunder, but no power to give them any allowance, nor any authority even to receive them.

In this disgraceful affair the soldiers showed a generosity which Mr. Hastings neither showed nor would have suffered, if he could have prevented it. They agreed amongst themselves to give to these women three lacs of rupees, and some trifle more; and the rest was divided as a prey among the army. The sum found in the fort was about 238,000*l.*, not the smallest part of which was in any way proved to be Cheyt Sing's property, or the property of any person but the unfortunate women who were found in the possession of it.

The plunder of the fort being thus given to the soldiers, what does Mr. Hastings next do? He is astonished and stupefied to find so much unprofitable violence, so much tyranny, and so little pecuniary advantage, — so much bloodshed, without any profit to the Company. He therefore breaks his faith with the soldiers; declares, that, having no right to the money, they must refund it to the Company; and on their refusal, he instituted a suit against them. With respect to the three lacs of rupees, or 30,000*l.*, which was to be given to these women, have we a scrap of paper to prove its payment? is there a single receipt or voucher to verify their having received one sixpence of it? I am rather inclined to think that they did receive it, or some part of it; but I don't know a greater crime in public officers than to have no kind of vouchers for the disposal of any large sums of money which pass through their hands: but this, my Lords, is the great vice of Mr. Hastings's government.

I have briefly taken notice of the claim which Mr. Hastings thought proper to make, on the part of the Company, to the treasure found in the fort of Bidjegur, after he had instigated the army to claim it as the right of the captors. Your Lordships will not be at a loss to account for this strange and barefaced inconsistency. This excellent Governor foresaw that he would have a bad account of this business to give to the contractors in Leadenhall Street, who consider laws, religion, morality, and the principles of state policy of empires as mere questions of profit and loss. Finding that he had dismal accounts to give of great sums expended without any returns, he had recourse to the only expedient that was left him. He had broken his faith with the ladies in the fort, by not suffering his officers to grant them that indemnity which his proclamation offered. Then, finding that the soldiers had taken him at his word, and appropriated the treasure to their own use, he next broke his faith with them. A constant breach of faith is a maxim with him. He claims the treasure for the Company, and institutes a suit before Sir Elijah Impey, who gives the money to the Company, and not to the soldiers. The soldiers appeal; and since the beginning of this trial, I believe even very lately, it has been decided by the Council that the letter of Mr. Hastings was not, as Sir Elijah Impey pretended, a mere private letter, because it had "Dear Sir," in it, but a public order, authorizing the soldiers to divide the money among themselves.

Thus 200,000*l.* was distributed among the soldiers; 400,000*l.* was taken away by Cheyt Sing, to be pillaged by all the Company's enemies through

whose countries he passed; and so ended one of the great sources from which this great financier intended to supply the exigencies of the Company, and recruit their exhausted finances.

By this proceeding, my Lords, the national honor is disgraced, all the rules of justice are violated, and every sanction, human and divine, trampled upon. We have, on one side, a country ruined, a noble family destroyed, a rebellion raised by outrage and quelled by bloodshed, the national faith pledged to indemnity, and that indemnity faithlessly withheld from helpless, defenceless women; while the other side of the picture is equally unfavorable. The East India Company have had their treasure wasted, their credit weakened, their honor polluted, and their troops employed against their own subjects, when their services were required against foreign enemies.

My Lords, it only remains for me, at this time, to make a few observations upon some proceedings of the prisoner respecting the revenue of Benares. I must first state to your Lordships that in the year 1780 he made a demand upon that country, which, by his own account, if it had been complied with, would only have left 23,000*l.* a year for the maintenance of the Rajah and his family. I wish to have this account read, for the purpose of verifying the observations which I shall have to make to your Lordships.

[*Here the account was read.*]

I must now observe to your Lordships, that Mr. Markham and Mr. Hastings have stated the Rajah's net revenue at forty-six lacs: but the accounts before you state it at forty lacs only. Mr. Hastings

had himself declared that he did not think the country could safely yield more, and that any attempt to extract more would be ruinous.

Your Lordships will observe that the first of these estimates is unaccompanied with any document whatever, and that it is contradicted by the papers of receipt and the articles of account, from all of which it appears that the country never yielded more than forty lacs during the time that Mr. Hastings had it in his possession; and you may be sure he squeezed as much out of it as he could. He had his own Residents, — first Mr. Markham, then Mr. Fowke, then Mr. Grant; they all went up with a design to make the most of it. They endeavored to do so; but they never could screw it up to more than forty lacs by all the violent means which they employed. The ordinary subsidy, as paid at Calcutta by the Rajah, amounted to twenty-two lacs; and it is therefore clearly proved by this paper, that Mr. Hastings's demand of fifty lacs (500,000*l.*), joined to the subsidies, was more than the whole revenue which the country could yield. What hoarded treasure the Rajah possessed, and which Mr. Hastings says he carried off with him, does not appear. That it was any considerable sum is more than Mr. Hastings knows, more than can be proved, more than is probable. He had not, in his precipitate flight, any means, I think, of carrying away a great sum. It further appears from these accounts, that, after the payment of the subsidy, there would only have been left 18,000*l.* a year for the support of the Rajah's family and establishments.

Your Lordships have now a standard, not a vision-

ary one, but a standard verified by accurate calculation and authentic accounts. You may now fairly estimate the avarice and rapacity of this man, who describes countries to be enormously rich in order that he may be justified in pillaging them. But however insatiable the prisoner's avarice may be, he has other objects in view, other passions rankling in his heart, besides the lust of money. He was not ignorant, and we have proved it by his own confession, that his pretended expectation of benefit to the Company could not be realized; but he well knew that by enforcing his demands he should utterly and effectually ruin a man whom he mortally hated and abhorred, — a man who could not, by any sacrifices offered to the avarice, avert the cruelty of his implacable enemy. As long as truth remains, as long as figures stand, as long as two and two are four, as long as there is mathematical and arithmetical demonstration, so long shall his cruelty, rage, ravage, and oppression remain evident to an astonished posterity.

I shall undertake, my Lords, when this court meets again, to develop the consequences of this wicked proceeding. I shall then show you that that part of the Rajah's family which he left behind him, and which Mr. Hastings pretended to take under his protection, was also ruined, undone, and destroyed; and that the once beautiful country of Benares, which he has had the impudence to represent as being still in a prosperous condition, was left by him in such a state as would move pity in any tyrant in the world except the one who now stands before you.

SPEECH

IN

GENERAL REPLY.

THIRD DAY: TUESDAY, JUNE 3, 1794.

MY LORDS, — We are called, with an awful voice, to come forth and make good our charge against the prisoner at your bar; but as a long time has elapsed since your Lordships heard that charge, I shall take the liberty of requesting my worthy fellow Manager near me to read that part to your Lordships which I am just now going to observe upon, that you may be the better able to apply my observations to the letter of the charge.

[*Mr. Wyndham reads.*]

"That the said Warren Hastings, having, as aforesaid, expelled the said Cheyt Sing from his dominions, did, of his own usurped authority, and without any communication with or any approbation given by the other members of the Council, nominate and appoint Rajah Mehip Narrain to the government of the provinces of Benares, and did appoint his father, Durbege Sing, as administrator of his authority, and did give to the British Resident, William Markham, a controlling authority over both; and did farther abrogate and set aside all treaties and agreements which subsisted between the state of Benares and the British nation; and did arbitrarily and tyrannically, of his mere au-

thority, raise the tribute to the sum of four hundred thousand pounds sterling, or thereabouts; did further wantonly and illegally impose certain oppressive duties upon goods and merchandise, to the great injury of trade and ruin of the provinces; and did farther dispose of, as his own, the property within the said provinces, by granting the same, or parts thereof, in pensions to such persons as he thought fit.

"That the said Warren Hastings did, some time in the year 1782, enter into a clandestine correspondence with William Markham, Esquire, the then Resident at Benares, which said Markham had been by him, the said Warren Hastings, obtruded into the said office, contrary to the positive orders of the Court of Directors; and, in consequence of the representations of the said Markham, did, under pretence that the new excessive rent or tribute was in arrear, and that the affairs of the provinces were likely to fall into confusion, authorize and impower him, by his own private authority, to remove the said Durbege Sing from his office and deprive him of his estate.

"That the said Durbege Sing was, by the private orders and authorities given by the said Warren Hastings, and in consequence of the representations aforesaid, violently thrown into prison, and cruelly confined therein, under pretence of the non-payment of the arrears of the tribute aforesaid.

"That the widow of Bulwant Sing, and the Rajah Mehip Narrain, did pointedly accuse the said Markham of being the sole cause of any delay in the payment of the tribute aforesaid, and did offer to prove the innocence of the said Durbege Sing, and also to prove that the faults ascribed to him were solely the faults of the said Markham; yet the said Warren Hastings

did pay no regard whatever to the said representations, nor make any inquiry into the truth of the same, but did accuse the said widow of Bulwant Sing and the Rajah aforesaid of gross presumption for the same; and, listening to the representations of the person accused, (viz., the Resident Markham,) did continue to confine the said Durbege Sing in prison, and did invest the Resident Markham with authority to bestow his office upon whomsoever he pleased.

"That the said Markham did bestow the said office of administrator of the provinces of Benares upon a certain person named Jagher Deo Seo, who, in order to gratify the arbitrary demands of the said Warren Hastings, was obliged greatly to distress and harass the unfortunate inhabitants of the said provinces.

"That the said Warren Hastings did, some time in the year 1784, remove the said Jagher Deo Seo from the said office, under pretence of certain irregularities and oppressions; which irregularities and oppressions are solely imputable to him, the said Warren Hastings.

"That the consequences of all these violent changes and arbitrary acts were the total ruin and desolation of the country, and the flight of the inhabitants: the said Warren Hastings having found every place abandoned at his approach, even by the officers of the very government which he established, and seeing nothing but traces of devastation in every village, the provinces in effect without a government, the administration misconducted, the people oppressed, trade discouraged, and the revenue in danger of a rapid decline.

"All which destruction, devastation, oppression, and ruin are solely imputable to the abovementioned and other arbitrary, illegal, unjust, and tyrannical acts of him, the said Warren Hastings, who, by all

and every one of the same, was and is guilty of high crimes and misdemeanors."

[*Mr. Burke proceeded.*]

My Lords, you have heard the charge; and you are now going to see the prisoner at your bar in a new point of view. I will now endeavor to display him in his character of a legislator in a foreign land, not augmenting the territory, honor, and power of Great Britain, and bringing the acquisition under the dominion of law and liberty, but desolating a flourishing country, that to all intents and purposes was our own, — a country which we had conquered from freedom, from tranquillity, order, and prosperity, and submitted, through him, to arbitrary power, misrule, anarchy, and ruin. We now see the object of his corrupt vengeance utterly destroyed, his family driven from their home, his people butchered, his wife and all the females of his family robbed and dishonored in their persons, and the effects which husband and parents had laid up in store for the subsistence of their families, all the savings of provident economy, distributed amongst a rapacious soldiery. His malice is victorious. He has well avenged, in the destruction of this unfortunate family, the Rajah's intended visit to General Clavering; he has well avenged the suspected discovery of his bribe to Mr. Francis.

"Thou hast it now, King, Cawdor, Glamis, all!"

Let us see, my Lords, what use he makes of this power, — how he justifies the bounty of Fortune, bestowing on him this strange and anomalous conquest. Anomalous I call it, my Lords, because it was the result of no plan in the cabinet, no opera-

tion in the field. No act or direction proceeded from him, the responsible chief, except the merciless orders, and the grant to the soldiery. He lay skulking and trembling in the fort of Chunar, while the British soldiery entitled themselves to the plunder which he held out to them. Nevertheless, my Lords, he conquers; the country is his own; he treats it as his own. Let us, therefore, see how this successor of Tamerlane, this emulator of Genghis Khân, governs a country conquered by the talents and courage of others, without assistance, guide, direction, or counsel given by himself.

My Lords, I will introduce his first act to your Lordships' notice in the words of the charge.

"The said Warren Hastings did, some time in the year 1782, enter into a clandestine correspondence with William Markham, Esquire, the then Resident at Benares; which said Markham had been by him, the said Warren Hastings, obtruded into the said office, contrary to the positive orders of the Court of Directors."

This unjustifiable obtrusion, this illegal appointment, shows you at the very outset that he defies the laws of his country, — most positively and pointedly defies them. In attempting to give a reason for this defiance, he has chosen to tell a branch of the legislature from which originated the act which wisely and prudently ordered him to pay implicit obedience to the Court of Directors, that he removed Mr. Fowke from Benares, contrary to the orders of the Court, on political grounds; because, says he, "I thought it necessary the Resident there should be a man of my own nomination and confidence. I avow the principle, and think no government can subsist without it.

The punishment of the Rajah made no part of my design in Mr. Fowke's removal or Mr. Markham's appointment, nor was his punishment an object of my contemplation at the time I removed Mr. Fowke to appoint Mr. Markham: an appointment of my own choice, and a signal to notify the restoration of my own authority; as I had before removed Mr. Fowke and appointed Mr. Graham for the same purpose."

Here, my Lords, he does not even pretend that he had any view whatever, in this appointment of Mr. Markham, but to defy the laws of his country. "I must," says he, "have a man of my own nomination, because it is a signal to notify the restoration of my own authority, as I had before removed Mr. Fowke for the same purpose."

I must beg your Lordships to keep in mind that the greater part of the observations with which I shall trouble you have a reference to the *principles* upon which this man acts; and I beseech you to remember always that you have before you a question and an issue of law; I beseech you to consider what it is that you are disposing of, — that you are not merely disposing of this man and his cause, but that you are disposing of the laws of your country.

You, my Lords, have made, and we have made, an act of Parliament in which the Council at Calcutta is vested with a special power, distinctly limited and defined. He says, "My authority is absolute. I defy the orders of the Court of Directors, because it is necessary for me to show that I can disregard them, as a signal of my own authority." He supposes his authority gone while he obeys the laws; but, says he, "the moment I got rid of the bonds and barriers of the laws," (as if there had been some act of violence

and usurpation that had deprived him of his rightful powers,) "I was restored to my own authority." What is this authority to which he is restored? Not an authority vested in him by the East India Company; not an authority sanctioned by the laws of this kingdom. It is neither of these, but the authority of Warren Hastings; an inherent divine right, I suppose, which he has thought proper to claim as belonging to himself; something independent of the laws, something independent of the Court of Directors, something independent of his brethren of the Council. It is "my own authority."

And what is the signal by which you are to know when this authority is restored? By his obedience to the Court of Directors? — by his attention to the laws of his country? — by his regard to the rights of the people? No, my Lords, no: the notification of the restoration of this authority is a formal disobedience of the orders of the Court of Directors. When you find the laws of the land trampled upon, and their appointed authority despised, then you may be sure that the authority of the prisoner is reëstablished.

There is, my Lords, always a close connection between vices of every description. The man who is a tyrant would, under some other circumstances, be a rebel; and he that is a rebel would become a tyrant. They are things which originally proceed from the same source. They owe their birth to the wild, unbridled lewdness of arbitrary power. They arise from a contempt of public order, and of the laws and institutions which curb mankind. They arise from a harsh, cruel, and ferocious disposition, impatient of the rules of law, order, and morality: and accord-

ingly, as their relation varies, the man is a tyrant, if a superior, a rebel, if an inferior. But this man, standing in a middle point between the two relations, the superior and inferior, declares himself at once both a rebel and a tyrant. We therefore naturally expect, that, when he has thrown off the laws of his country, he will throw off all other authority. Accordingly, in defiance of that authority to which he owes his situation, he nominates Mr. Markham to the Residency at Benares, and therefore every act of Mr. Markham is his. He is responsible, — doubly responsible to what he would have been, if in the ordinary course of office he had named this agent. Every governor is responsible for the misdemeanors committed under his legal authority for which he does not punish the delinquent; but the prisoner is doubly responsible in this case, because he assumed an illegal authority, which can be justified only, if at all, by the good resulting from the assumption.

Having now chosen his principal instrument and his confidential and sole counsellor, having the country entirely in his hand, and every obstacle that could impede his course swept out of the arena, what does he do under these auspicious circumstances? You would imagine, that, in the first place, he would have sent down to the Council at Calcutta a general view of his proceedings, and of their consequences, together with a complete statement of the revenue; that he would have recommended the fittest persons for public trusts, with such other measures as he might judge to be most essential to the interest and honor of his employers. One would have imagined he would have done this, in order that the Council and the Court of Directors might have a clear view

of the whole existing system, before he attempted to make a permanent arrangement for the administration of the country. But, on the contrary, the whole of his proceedings is clandestinely conducted; there is not the slightest communication with the Council upon the business, till he had determined and settled the whole. Thus the Council was placed in a complete dilemma, — either to confirm all his wicked and arbitrary acts, (for such we have proved them to be,) or to derange the whole administration of the country again, and to make another revolution as complete and dreadful as that which he had made.

The task which the Governor-General had imposed upon himself was, I admit, a difficult one; but those who pull down important ancient establishments who wantonly destroy modes of administration and public institutions under which a country has prospered, are the most mischievous, and therefore the wickedest of men. It is not a reverse of fortune, it is not the fall of an individual, that we are here talking of. We are, indeed, sorry for Cheyt Sing and Durbege Sing, as we should be sorry for any individual under similar circumstances.

It is wisely provided in the constitution of our heart, that we should interest ourselves in the fate of great personages. They are therefore made everywhere the objects of tragedy, which addresses itself directly to our passions and our feelings. And why? Because men of great place, men of great rank, men of great hereditary authority, cannot fall without a horrible crash upon all about them. Such towers cannot tumble without ruining their dependent cottages.

The prosperity of a country, that has been dis-

tressed by a revolution which has swept off its principal men, cannot be reëstablished without extreme difficulty. This man, therefore, who wantonly and wickedly destroyed the existing government of Benares, was doubly bound to use all possible care and caution in supplying the loss of those institutions which he had destroyed, and of the men whom he had driven into exile. This, I say, he ought to have done. Let us now see what he really did do.

He set out by disposing of all the property of the country as if it was his own. He first confiscated the whole estates of the *Baboos*, the great nobility of the country, to the amount of six lacs of rupees. He then distributed the lands and revenue of the country according to his own pleasure; and as he had seized the lands without our knowing why or wherefore, so the portion which he took away from some persons he gave to others, in the same arbitrary manner, and without any assignable reason.

When we were inquiring what jaghires Mr. Hastings had thought proper to grant, we found, to our astonishment, (though it is natural that his mind should take this turn,) that he endowed several charities with jaghires. He gave a jaghire to some Brahmins to pray for the perpetual prosperity of the Company, and others to procure the prayers of the same class of men for himself. I do not blame his Gentoo piety, when I find no Christian piety in the man: let him take refuge in any superstition he pleases. The crime we charge is his having distributed the lands of others at his own pleasure. Whether this proceeded from piety, from ostentation, or from any other motive, it matters not. We contend that he ought not to have distributed such land

at all, — that he had no right to do so; and consequently, the gift of a single acre of land, by his own private will, was an act of robbery, either from the public or some individual.

When he had thus disturbed the landed property of Benares, and distributed it according to his own will, he thought it would be proper to fix upon a person to govern the country; and of this person he himself made the choice. It does not appear that the people could have lost, even by the revolt of Cheyt Sing, the right which was inherent in them to be governed by the lawful successor of his family. We find, however, that this man, by his own authority, by the arbitrary exercise of his own will and fancy, did think proper to nominate a person to succeed the Rajah who had no legal claims to the succession. He made choice of a boy about nineteen years old; and he says he made that choice upon the principle of this boy's being descended from Bulwant Sing by the female line. But he does not pretend to say that he was the proper and natural heir to Cheyt Sing; and we will show you the direct contrary. Indeed, he confesses the contrary himself; for he argues, in his defence, that, when a new system was to be formed with the successor of Cheyt Sing who was not his heir, such successor had no claim of right.

But perhaps the want of right was supplied by the capacity and fitness of the person who was chosen. I do not say that this does or can for one moment supersede the positive right of another person; but it would palliate the injustice in some degree. Was there in this case any palliative matter? Who was the person chosen by Mr. Hastings to succeed Cheyt Sing? My Lords, the person chosen was a minor:

for we find the prisoner at your bar immediately proceeded to appoint him a guardian. This guardian he also chose by his own will and pleasure, as he himself declares, without referring to any particular claim or usage, — without calling the Pundits to instruct him, upon whom, by the Gentoo laws, the guardianship devolved.

I admit, that, in selecting a guardian, he did not, in one respect, act improperly; for he chose the boy's father, and he could not have chosen a better guardian for his person. But for the administration of his government qualities were required which this man did not possess. He should have chosen a man of vigor, capacity, and diligence, a man fit to meet the great difficulties of the situation in which he was to be placed.

Mr. Hastings, my Lords, plainly tells you that he did not think the man's talents to be extraordinary, and he soon afterwards says that he had a great many incapacities. He tells you that he has a doubt whether he was capable of realizing those hopes of revenue which he (Mr. Hastings) had formed. Nor can this be matter of wonder, when we consider that he had ruined and destroyed the ancient system, the whole scheme and tenor of public offices, and had substituted nothing for them but his own arbitrary will. He had formed a plan of an entire new system, in which the practical details had no reference to the experience and wisdom of past ages. He did not take the government as he found it; he did not take the system of offices as it was arranged to his hand; but he dared to make the wicked and flagitious experiment which I have stated, — an experiment upon the happiness of a numerous people,

whose property he had usurped and distributed in the manner which has been laid before your Lordships. The attempt failed, and he is responsible for the consequences.

How dared he to make these experiments? In what manner can he be justified for playing fast and loose with the dearest interests, and perhaps with the very existence, of a nation? Attend to the manner in which he justifies himself, and you will find the whole secret let out. "The easy accumulation of too much wealth," he says, "had been Cheyt Sing's ruin; it had buoyed him up with extravagant and ill-founded notions of independence, which I very much wished to discourage in the future Rajah. Some part, therefore, of the superabundant produce in the country I turned into the coffers of the sovereign by an augmentation of the tribute." — Who authorized him to make any augmentation of the tribute? But above all, who authorized him to augment it upon this principle? — "I must take care the tributary prince does not grow too rich; if he gets rich, he will get proud." — This prisoner has got a scale like that in the almanac, — "War begets poverty, poverty peace," and so on. The first rule that he lays down is, that he will keep the new Rajah in a state of poverty; because, if he grows rich, he will become proud, and behave as Cheyt Sing did. You see the ground, foundation, and spirit of the whole proceeding. Cheyt Sing was to be robbed. Why? Because he is too rich. His successor is to be reduced to a miserable condition. Why? Lest he should grow rich and become troublesome. The whole of his system is to prevent men from growing rich, lest, if they should grow rich, they

should grow proud, and seek independence. Your Lordships see that in this man's opinion riches must beget pride. I hope your Lordships will never be so poor as to cease to be proud; for, ceasing to be proud, you will cease to be independent.

Having resolved that the Rajah should not grow rich, for fear he should grow proud and independent, he orders him to pay forty lacs of rupees, or 400,000*l.*, annually to the Company. The tribute had before been 250,000*l.*, and he all at once raised it to 400,000*l.* Did he previously inform the Council of these intentions? Did he inform them of the amount of the gross collections of the country, from any properly authenticated accounts procured from any public office?

I need not inform your Lordships, that it is a serious thing to draw out of a country, instead of 250,000*l.*, an annual tribute of 400,000*l.* There were other persons besides the Rajah concerned in this enormous increase of revenue. The whole country is interested in its resources being fairly estimated and assessed; for, if you overrate the revenue which it is supposed to yield to the great general collector, you necessitate him to overrate every under-collector, and thereby instigate them to harass and oppress the people. It is upon these grounds that we have charged the prisoner at your bar with having acted arbitrarily, illegally, unjustly, and tyrannically: and your Lordships will bear in mind that these acts were done by his sole authority, which authority we have shown to have been illegally assumed.

My Lords, before he took the important steps which I have just stated, he consulted no one but Mr. Markham, whom he placed over the new Rajah. The

Rajah was only nineteen years old: but Mr. Markham undoubtedly had the advantage of him in this respect, for he was twenty-one. He had also the benefit of five months' experience of the country: an abundant experience, to be sure, my Lords, in a country where it is well known, from the peculiar character of its inhabitants, that a man cannot anywhere put his foot without placing it upon some trap or mine, until he is perfectly acquainted with its localities. Nevertheless, he puts the whole country and a prince of nineteen, as appears from the evidence, into the hands of Mr. Markham, a man of twenty-one. We have no doubt of Mr. Markham's capacity; but he could have no experience in a country over which he possessed a general controlling power. Under these circumstances, we surely shall not wonder, if this young man fell into error. I do not like to treat harshly the errors into which a very young person may fall; but the man who employs him, and puts him into a situation for which he has neither capacity nor experience, is responsible for the consequences of such an appointment; and Mr. Hastings is doubly responsible in this case, because he placed Mr. Markham as Resident merely to show that he defied the authority of the Court of Directors.

But, my Lords, let us proceed. We find Mr. Hastings resolved to exact forty lacs from the country, although he had no proof that such a tribute could be fairly collected. He next assigns to this boy, the Rajah, emoluments amounting to about 60,000*l.* a year. Let us now see upon what grounds he can justify the assignment of these emoluments. I can perceive none but such as are founded upon the opinion of its being necessary to the support of the

Rajah's dignity. Now, when Mr. Markham, who is the sole ostensible actor in the management of the new Rajah, as he had been a witness to the deposition of the former, comes before you to give an account of what he thought of Cheyt Sing, who appears to have properly supported the dignity of his situation, he tells you that about a lac or a lac and a half (10,000*l.* or 15,000*l.*) a year was as much as Cheyt Sing could spend. And yet this young creature, settled in the same country, and who was to pay 400,000*l.* a year, instead of 250,000*l.*, tribute to the Company, was authorized by Mr. Hastings to collect and reserve to his own use 60,000*l.* out of the revenue. That is to say, he was to receive four times as much as was stated by Mr. Hastings, on Mr. Markham's evidence, to have been necessary to support him.

Your Lordships tread upon corruption everywhere. Why was such a large revenue given to the young Rajah to support his dignity, when, as they say, Cheyt Sing did not spend above a lac and half in support of his, — though it is known he had great establishments to maintain, that he had erected considerable buildings adorned with fine gardens, and, according to them, had made great preparations for war?

We must at length imagine that they knew the country could bear the impost imposed upon it. I ask, How did they know this? We have proved to you, by a paper presented here by Mr. Markham, that the net amount of the collections was about 360,000*l.* This is their own account, and was made up, as Mr. Markham says, by one of the clerks of Durbege Sing, together with his Persian moonshee, (a very fine council to settle the revenues of the kingdom!) in his pri-

vate house. And with this account before them, they have dared to impose upon the necks of that unhappy people a tribute of 400,000*l.*, together with an income for the Rajah of 60,000*l.* These sums the Naib, Durbege Sing, was bound to furnish, and left to get them as he could. Your Lordships will observe that I speak of the net proceeds of the collections. We have nothing to do with the gross amount. We are speaking of what came to the public treasury, which was no more than I have stated; and it was out of the public treasury that these payments were to be made, because there could be no other honest way of getting the money.

But let us now come to the main point, which is to ascertain what sums the country could really bear. Mr. Hastings maintains (whether in the speech of his counsel or otherwise I do not recollect) that the revenue of the country was 400,000*l.*, that it constantly paid that sum, and flourished under the payment. In answer to this, I refer your Lordships, first, to Mr. Markham's declaration, and the Wassil Baakee, which is in page 1750 of the printed Minutes. I next refer your Lordships to Mr. Duncan's Reports, in page 2493. According to Mr. Duncan's public estimate of the revenue of Benares, the net collections of the very year we are speaking of, when Durbege Sing had the management, and when Mr. Markham, his Persian moonshee, and a clerk in his private house, made their estimates without any documents, or with whatever documents, or God only knows, for nothing appears on the record of the transaction, — the collections yielded in that year but 340,000*l.*, that is, 20,000*l.* less than Mr. Markham's estimate. But take it which way you will, whether you take it at Mr.

Markham's 360,000*l.*, or at Mr. Duncan's 340,000*l.*, your Lordships will see, that, after reserving 60,000*l.* for his own private expenses, the Rajah could not realize a sum nearly equal to the tribute demanded.

Your Lordships have also in evidence before you an account of the produce of the country for I believe full five years after this period, from which it appears that it never realized the forty lacs, or anything like it, — yielding only thirty-seven and thirty-nine lacs, or thereabouts, which is 20,000*l.* short of Mr. Markham's estimate, and 160,000*l.* short of Mr. Hastings's. On what data could the prisoner at your bar have formed this estimate? Where were all the clerks and mutsuddies, where were all the men of business in Benares, who could have given him complete information upon the subject? We do not find the trace of any of them; all our information is Mr. Markham's moonshee, and some clerk of Durbege Sing's employed in Mr. Markham's private counting-house, in estimating revenues of a country.

The disposable revenue was still further reduced by the jaghires which Mr. Hastings granted, but to what amount does not appear. He mentions the increase in the revenue by the confiscation of the estates of the Baboos, who had been in rebellion. This he rates at six lacs. But we have inspected the accounts, we have examined them with that sedulous attention which belongs to that branch of the legislature that has the care of the public revenues, and we have not found one trace of this addition. Whether these confiscations were ever actually made remains doubtful; but if they were made, the application or the receipt of the money they yielded does not appear in any account whatever. I leave your Lordships to judge of this.

But it may be said that Hastings might have been in an error. If he was in an error, my Lords, his error continued an extraordinary length of time. The error itself was also extraordinary in a man of business: it was an error of account. If his confidential agent, Mr. Markham, had originally contributed to lead him into the error, he soon perceived it. He soon informed Mr. Hastings that his expectations were erroneous, and that he had overrated the country. What, then, are we to think of his persevering in this error? Mr. Hastings might have formed extravagant and wild expectations, when he was going up the country to plunder; for we allow that avarice may often overcalculate the hoards that it is going to rob. If a thief is going to plunder a banker's shop, his avarice, when running the risk of his life, may lead him to imagine there is more money in the shop than there really is. But when this man was in possession of the country, how came he not to know and understand the condition of it better? In fact, he was well acquainted with it; for he has declared it to be his opinion that forty lacs was an overrated calculation, and that the country could not continue to pay this tribute at the very time he was imposing it. You have this admission in page 294 of the printed Minutes; but in the very face of it he says, if the Rajah will exert himself, and continue for some years the regular payment, he will then grant him a remission. Thus the Rajah was told, what he well knew, that he was overrated, but that at some time or another he was to expect a remission. And what, my Lords, was the condition upon which he was to obtain this promised indulgence? The punctual payment of that which Mr. Hastings de-

clares he was not able to pay, — and which he could not pay without ruining the country, betraying his own honor and character, and acting directly contrary to the duties of the station in which Mr. Hastings had placed him. Thus this unfortunate man was compelled to have recourse to the most rigorous exaction, that he might be enabled to satisfy the exorbitant demand which had been made upon him.

But let us suppose that the country was able to afford the sum at which it was assessed, and that nothing was required but vigor and activity in the Rajah. Did Mr. Hastings endeavor to make his strength equal to the task imposed on him? No: the direct contrary. In proportion as he augmented the burdens of this man, in just that proportion he took away his strength and power of supporting these burdens. There was not one of the external marks of honor which attended the government of Cheyt Sing that he did not take away from the new Rajah; and still, when this new man came to his new authority, deprived of all external marks of consequence, and degraded in the opinion of his subjects, he was to extort from his people an additional revenue, payable to the Company, of fifteen lacs of rupees more than was paid by the late Rajah in all the plenitude of undivided authority. To increase this difficulty still more, the father and guardian of this inexperienced youth was a man who had no credit or reputation in the country. This circumstance alone was a sufficient drawback from the weight of his authority; but Mr. Hastings took care that he should be divested of it altogether; for, as our charge states, he placed him under the immediate direction of Mr. Markham, and consequently Mr. Markham was the gov-

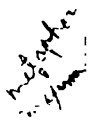
ernor of the country. Could a man with a reduced, divided, contemptible authority venture to strike such bold and hardy strokes as would be efficient without being oppressive? Could he or any other man, thus bound and shackled, execute such vigorous and energetic measures as were necessary to realize such an enormous tribute as was imposed upon this unhappy country?

My Lords, I must now call your attention to another circumstance, not mentioned in the charge, but connected with the appointment of the new Rajah, and of his Naib, Durbege Sing, and demonstrative of the unjust and cruel treatment to which they were exposed. It appears from a letter produced here by Mr. Markham, (upon which kind of correspondence I shall take the liberty to remark hereafter,) that the Rajah lived in perpetual apprehension of being removed, and that a person called Ussaun Sing was intended as his successor. Mr. Markham, in one part of his correspondence, tells you that the Rajah did not intend to hold the government any longer. Why? Upon a point of right, namely, that he did not possess it upon the same advantageous terms as Cheyt Siug; bnt he tells you in another letter, (and this is a much better key to the whole transaction,) that he was in dread of that Ussaun Sing whom I have just mentioned. This man Mr. Hastings kept ready to terrify the Rajah; and you will, in the course of these transactions, see that there is not a man in India, of any consideration, against whom Mr. Hastings did not keep a kind of pretender, to keep him in continual awe. This Ussaun Sing, whom Mr. Hastings brought up with him to Benares, was dreaded by Cheyt Sing

not less than by his successor. We find that he was at first nominated Naib or acting governor of the country, but had never been put in actual possession of this high office, and Durbege Sing was appointed to it. Although Ussaun Sing was thus removed, he continued his pretensions, and constantly solicited the office. Thus the poor man appointed by Mr. Hastings, and actually in possession, was not only called upon to perform tasks beyond his strength, but was overawed by Mr. Markham, and terrified by Ussaun Sing, (the mortal enemy of the family,) who, like an accusing fiend, was continually at his post, and unceasingly reiterating his accusations. This Ussaun Sing was, as Mr. Markham tells you, one of the causes of the Rajah's continued dejection and despondency. But it does not appear that any of these circumstances were ever laid before the Council; the whole passed between Mr. Hastings and Mr. Markham.

Mr. Hastings having by his arbitrary will thus disposed of the revenue and of the landed property of Benares, we will now trace his further proceedings and their effects. He found the country most flourishing in agriculture and in trade; but not satisfied with the experiment he had made upon the government, upon the revenues, upon the reigning family, and upon all the landed property, he resolved to make as bold and as novel an experiment upon the commercial interests of the country. Accordingly he entirely changed that part of the revenue system which affects trade and commerce, the life and soul of a state. Without any advice that we know of, except Mr. Markham's, he sat down to change in every point the whole commercial system of that

country; and he effected the change upon the same arbitrary principles which he had before acted upon, namely, his own arbitrary will. We are told, indeed, that he consulted bankers and merchants; but when your Lordships shall have learned what has happened from this experiment, you will easily see whether he did resort to proper sources of information or not. You will see that the mischief which has happened has proceeded from the exercise of arbitrary power. Arbitrary power, my Lords, is always a miserable creature. When a man once adopts it as the principle of his actions, no one dares to tell him a truth, no one dares to give him any information that is disagreeable to him; for all know that their life and fortune depend upon his caprice. Thus the man who lives in the exercise of arbitrary power condemns himself to eternal ignorance. Of this the prisoner at your bar affords us a striking example. This man, without advice, without assistance, and without resource, except in his own arbitrary power, stupidly ignorant in himself, and puffed up with the constant companion of ignorance, a blind presumption, alters the system of commercial imposts, and thereby ruined the whole trade of the country, leaving no one part of it undestroyed.



Let me now call your Lordships' attention to his assumption of power, without one word of communication with the Council at Calcutta, where the whole of these trading regulations might and ought to have been considered, and where they could have been deliberately examined and determined upon. By this assumption the Council was placed in the situation which I have before described: it must either confirm his acts, or again undo everything which had been

done. He had provided not only against resistance, but almost against any inquiry into his wild projects. He had by his opium contracts put all vigilance asleep, and by his bullock and other contracts he had secured a variety of concealed interests, both abroad and at home. He was sure of the ratification of his acts by the Council, whenever he should please to inform them of his measures; and to his secret influence he trusted for impunity in his career of tyranny and oppression.

In bringing before you his arbitrary mode of imposing duties, I beg to remind your Lordships, that, when I examined Mr. Markham concerning the imposing of a duty of five per cent instead of the former duty of two, I asked him whether that five per cent was not laid on in such a manner as utterly to extinguish the trade, and whether it was not in effect and substance five times as much as had been paid before. What was his answer? Why, that many plans, which, when considered in the closet, look specious and plausible, will not hold when they come to be tried in practice, and that this plan was one of them. The additional duties, said he, have never since been exacted. But, my Lords, the very attempt to exact them utterly ruined the trade of the country. They were imposed upon a visionary theory, formed in his own closet, and the result was exactly what might have been anticipated. Was it not an abominable thing in Mr. Hastings to withhold from the Council the means of ascertaining the real operation of his taxes? He had no knowledge of trade himself; he cannot keep an account; he has no memory. In fact, we find him a man possessed of no one quality fit for any kind of business whatever. We find him pursu-

ing his own visionary projects, without knowing anything of the nature or [of?] the circumstances under which the trade of the country was carried on. These projects might have looked very plausible: but when you come to examine the actual state of the trade, it is not merely a difference between five and two per cent, but it becomes a different mode of estimating the commodity, and it amounts to five times as much as was paid before. We bring this as an exemplification of this cursed mode of arbitrary proceeding, and to show you his total ignorance of the subject, and his total indifference about the event of the measure he was pursuing. When he began to perceive his blunders, he never took any means whatever to put the new regulations which these blunders had made necessary into execution, but he left all this mischievous project to rage in its full extent.

I have shown your Lordships how he managed the private property of the country, how he managed the government, and how he managed the trade. I am now to call your Lordships' attention to some of the consequences which have resulted from the instances of management, or rather gross mismanagement, which have been brought before you. Your Lordships will recollect that none of these violent and arbitrary measures, either in their conception or in the progress of their execution, were officially made known to the Council; and you will observe, as we proved, that the same criminal concealment existed with respect to the fatal consequences of these acts.

After the flight of Cheyt Sing, the revenues were punctually paid by the Naib, Durbege Sing, month by month, kist by kist, until the month of July, and then, as the country had suffered some distress, the

Naib wished this kist, or instalment, to be thrown on the next month. You will ask why he wished to burden this month beyond the rest. I reply, The reason was obvious: the month of August is the last of the year, and he would, at its expiration, have the advantage of viewing the receipts of the whole year, and ascertaining the claim of the country to the remission of a part of the annual tribute which Mr. Hastings had promised, provided the instalments were paid regularly. It was well known to everybody that the country had suffered very considerably by the revolt, and by a drought which prevailed that year. The Rajah, therefore, expected to avail himself of Mr. Hastings's flattering promise, and to save by the delay the payment of one of the two kists. But mark the course that was taken. The two kists were at once demanded at the end of the year, and no remission of tribute was allowed. By the promise of remission Mr. Hastings tacitly acknowledged that the Rajah was overburdened; and he admits that the payment of the July kist was postponed at the Rajah's own desire. He must have seen the Rajah's motive for desiring delay, and he ought to have taken care that this poor man should not be oppressed and ruined by this compliance with requests founded on such motives.

So passed the year 1781. No complaints of arrears in Durbege Sing's payments appear on record before the month of April, 1782; and I wish your Lordships seriously to advert to the circumstances attending the evidence respecting these arrears, which has been produced for the first time by the prisoner in his defence here at your bar. This evidence does not appear in the Company's records; it does not appear

in the book of the Benares correspondence; it does not appear in any documents to which the Commons could have access; it was unknown to the Directors, unknown to the Council, unknown to the Residents, Mr. Markham's successors, at Benares, unknown to the searching and inquisitive eye of the Commons of Great Britain. This important evidence was drawn out of Mr. Markham's pocket, in the presence of your Lordships. It consists of a private correspondence which he carried on with Mr. Hastings, unknown to the Council, after Durbege Sing had been appointed Naib, after the new government had been established, after Mr. Hastings had quitted that province, and had apparently wholly abandoned it, and when there was no reason whatever why the correspondence should not be public. This private correspondence of Mr. Markham's, now produced for the first time, is full of the bitterest complaints against Durbege Sing. These clandestine complaints, these underhand means of accomplishing the ruin of a man, without the knowledge of his true and proper judges, we produce to your Lordships as a heavy aggravation of our charge, and as a proof of a wicked conspiracy to destroy the man. For if there was any danger of his falling into arrears when the heavy accumulated kists came upon him, the Council ought to have known that danger; they ought to have known every particular of these complaints: for Mr. Hastings had then carried into effect his own plans.

I ought to have particularly marked for your Lordships' attention this second era of clandestine correspondence between Mr. Hastings and Mr. Markham. It commenced after Mr. Hastings had quitted Benares, and had nothing to do with it but as Gov-

ernor-General: even after his extraordinary, and, as we contend, illegal, power had completely expired, the same clandestine correspondence was carried on. He apparently considered Benares as his private property; and just as a man acts with his private steward about his private estate, so he acted with the Resident at Benares. He receives from him and answers letters containing a series of complaints against Durbege Sing, which began in April and continued to the month of November, without making any public communication of them. He never laid one word of this correspondence before the Council until the 29th of November, and he had then completely settled the fate of this Durbege Sing.

This clandestine correspondence we charge against him as an act of rebellion; for he was bound to lay before the Council the whole of his correspondence relative to the revenue and all the other affairs of the country. We charge it not only as rebellion against the orders of the Company and the laws of the land, but as a wicked plot to destroy this man, by depriving him of any opportunity of defending himself before the Council, his lawful judges. I wish to impress it strongly on your Lordships' minds, that neither the complaints of Mr. Markham nor the exculpations of Durbege Sing were ever made known till Mr. Markham was examined in this hall.

The first intimation afforded the Council of what had been going on at Benares from April, 1782, at which time, Mr. Markham says, the complaints against Durbege Sing had risen to serious importance, was in a letter dated the 27th of November following. This letter was sent to the Council from Nia Serai, in the Ganges, where Mr. Hastings had retired for the bene-

fit of the air. During the whole time he was in Calcutta, it does not appear upon the records that he had ever held any communication with the Council upon the subject. The letter is in the printed Minutes, page 298, and is as follows.

"*The Governor-General.*—I desire the Secretary to lay the accompanying letters from Mr. Markham before the board, and request that orders may be immediately sent to him concerning the subjects contained in them. It may be necessary to inform the board, that, on repeated information from Mr. Markham, which indeed was confirmed to me beyond a doubt by other channels, and by private assurances which I could trust, that the affairs of that province were likely to fall into the greatest confusion from the misconduct of Baboo Durbege Sing, whom I had appointed the Naib, fearing the dangerous consequences of a delay, and being at too great a distance to consult the members of the board, who I knew could repose that confidence in my local knowledge as to admit of this occasional exercise of my own separate authority, I wrote to Mr. Markham the letter to which he alludes, dated the 29th of September last, of which I now lay before the board a copy. The first of the accompanying letters from Mr. Markham arrived at a time when a severe return of my late illness obliged me, by the advice of my physicians, to leave Calcutta for the benefit of the country air, and prevented me from bringing it earlier before the notice of the board."

I have to remark upon this part of the letter, that he claims for himself an exercise of his own authority. He had now no delegation, and therefore no claim to separate authority. He was only a member of the

board, obliged to do everything according to the decision of the majority, and yet he speaks of his own separate authority; and after complimenting himself, he requests its confirmation. The complaints of Mr. Markham had been increasing, growing, and multiplying upon him, from the month of April preceding, and he had never given the least intimation of it to the board until he wrote this letter. This was at so late a period that he then says, "The time won't wait for a remedy; I am obliged to use my own separate authority"; although he had had abundant time for laying the whole matter before the Council.

He next goes on to say, — "It had, indeed, been my intention, but for the same cause, to have requested the instructions of the board for the conduct of Mr. Markham in the difficulties which he had to encounter immediately after the date of my letter to him, and to have recommended the substance of it for an order to the board." He seems to have promised Mr. Markham, that, if the violent act which Mr. Markham proposed, and which he, Mr. Hastings, ordered, was carried into execution, an authority should be procured from the board. He, however, did not get Mr. Markham such an authority. Why? Because he was resolved, as he has told you, to act by his own separate authority; and because, as he has likewise told you, that he disobeys the orders of the Court of Directors, and defies the laws of his country, as a signal of his authority.

Now what does he recommend to the board? That it will be pleased to confirm the appointment which Mr. Markham made in obedience to his individual orders, as well as the directions which he had given him to exact from Baboo Durbege Sing with the ut-

most rigor every rupee of the collections, and either to confine him at Benares or send him to Chunar and imprison him there until the whole of his arrears were paid up. Here, then, my Lords, you have, what plainly appears in every act of Mr. Hastings, a feeling of resentment for some personal injury. "I feel myself," says he, "and may be allowed on such an occasion to acknowledge it, personally hurt at the ingratitude of this man, and the discredit which his ill conduct has thrown on my appointment of him. The Rajah himself, scarcely arrived at the verge of manhood, was in understanding but little advanced beyond the term of childhood; and it had been the policy of Cheyt Sing to keep him equally secluded from the world and from business." This is the character Mr. Hastings gives of a man whom he appointed to govern the country. He goes on to say of Durbege Sing,—"As he was allowed a jaghire of a very liberal amount, to enable him to maintain a state and consequence suitable both to the relation in which he stood to the Rajah and the high office which had been assigned to him, and sufficient also to free him from the temptation of little and mean peculations, it is therefore my opinion, and I recommend, that Mr. Markham be ordered to divest him of his jaghire, and reunite it to the *malguzaree*, or the land paying its revenue through the Rajah to the Company. The opposition made by the Rajah and the old Ranny, both equally incapable of judging for themselves, do certainly originate from some secret influence which ought to be checked by a decided and peremptory declaration of the authority of the board, and a denunciation of their displeasure at their presumption. If they can be induced to yield the appearance of a

cheerful acquiescence in the new arrangement, and to adopt it as a measure formed with their participation, it would be better than that it should be done by a declared act of compulsion; but at all events it ought to be done." My Lords, it had been already done: the Naib was dismissed; he was imprisoned; his jaghire was confiscated: all these things were done by Mr. Hastings's orders. He had resolved to take the whole upon himself; he had acted upon that resolution before he addressed this letter to the board.

Thus, my Lords, was this unhappy man punished without any previous trial, or any charges, except the complaints of Mr. Markham, and some other private information which Mr. Hastings said he had received. Before the poor object of these complaints could make up his accounts, before a single step was taken, judicially or officially, to convict him of any crime, he was sent to prison, and his private estates confiscated.

My Lords, the Commons of Great Britain claim from you, that no man shall be imprisoned till a regular charge is made against him, and the accused fairly heard in his defence. They claim from you, that no man shall be imprisoned on a matter of account, until the account is settled between the parties. And claiming this, we do say that the prisoner's conduct towards Durbege Sing was illegal, unjust, violent, and oppressive. The imprisonment of this man was clearly illegal on the part of Mr. Hastings, as he acted without the authority of the Council, and doubly oppressive, as the imprisoned man was thereby disabled from settling his account with the numberless sub-accountants whom he had to deal with in the collection of the revenue.

Having now done with these wicked, flagitious, abandoned, and abominable acts, I shall proceed to the extraordinary powers given by Mr. Hastings to his instrument, Mr. Markham, who was employed in perpetrating these acts, and to the very extraordinary instructions which he gave this instrument for his conduct in the execution of the power intrusted to him. In a letter to Mr. Markham, he says, —

"I need not tell you, my dear Sir, that I possess a very high opinion of your abilities, and that I repose the utmost confidence in your integrity." He might have had reason for both, but he scarcely left to Mr. Markham the use of either. He arbitrarily imposed upon him the tasks which he wished him to execute, and he engaged to bear out his acts by his own power. "From your long residence at Benares," says he, "and from the part you have had in the business of that zemindary, you must certainly best know the men who are most capable and deserving of public employment. From among these I authorize you to nominate a Naib to the Rajah, in the room of Durbege Sing, whom, on account of his ill conduct, I think it necessary to dismiss from that office. It will be hardly necessary to except Ussaun Sing from the description of men to whom I have limited your choice, yet it may not be improper to apprise you that I will on no terms consent to his being Naib. In forming the arrangements consequent upon this new appointment, I request you will, as far as you can with propriety, adopt those which were in use during the life of Bulwant Sing, — so far, at least, as to have distinct offices for distinct purposes, independent of each other, and with proper men at the head of each; so that one office may detect or pre-

vent any abuses or irregularities in the others, and together form a system of reciprocal checks. Upon that principle, I desire you will in particular establish, under whatever names, one office of receipts, and another of treasury. The officers of both must be responsible for the truth and regularity of their respective accounts, but not subject in the statement of them to the control or interference of the Rajah or Naib; nor should they be removable at pleasure, but for manifest misconduct only. At the head of one or other of these offices I could wish to see the late Buckshee, Rogoober Dyall. His conduct in his former office, his behavior on the revolt of Cheyt Sing, and particularly at the fall of Bidjegur, together with his general character, prove him worthy of employment, and of the notice of our government. It is possible that he may have objections to holding an office under the present Rajah: offer him one, however, and let him know that you do so by my directions." He then goes on to say, — "Do not wholly neglect the Rajah; consult with him in appearance, but in appearance only. His situation requires that you should do that much; but his youth and inexperience forbid that you should do more."

You see, my Lords, he has completely put the whole government into the hands of a man who had no name, character, or official situation, but that of the Company's Resident at that place. Let us now see what is the office of a Resident. It is to reside at the court of the native prince, to give the Council notice of the transactions that are going on there, and to take care that the tribute be regularly paid, kist by kist. But we have seen that Mr. Markham, the Resident at Benares, was invested by Mr. Hastings

with supreme authority in this unhappy country. He was to name whoever he pleased to its government, with the exception of Ussaun Sing, and to drive out the person who had possessed it under an authority which could only be revoked by the Council. Thus Mr. Hastings delegated to Mr. Markham an authority which he himself did not really possess, and which could only be legally exercised through the medium of the Council.

With respect to Durbege Sing, he adds, — "He has dishonored my choice of him." *My* choice of him! "It now only remains to guard against the ill effects of his misconduct, to detect and punish it. To this end I desire that the officers to be appointed in consequence of these instructions do, with as much accuracy and expedition as possible, make out an account of the receipts, disbursements, and transactions of Durbege Sing, during the time he has acted as Naib of the zemindary of Benares; and I desire you will, in my name, assure him, that, unless he pays at the limited time every rupee of the revenue due to the Company, his life shall answer for the default. I need not caution you to provide against his flight, and the removal of his effects." He here says, my Lords, that he will detect and punish him; but the first thing he does, without any detection, even before the accounts he talks of are made up, and without knowing whether he has got the money or not, he declares that he will have every rupee paid at the time, or otherwise the Naib's life shall pay for it.

Is this the language of a British governor, — of a person appointed to govern *by law* nations subject to the dominion and under the protection of this kingdom? Is he to order a man to be first imprisoned

and deprived of his property, then for an inquiry to be made, and to declare, during that inquiry, that, if every rupee of a presumed embezzlement be not paid up, the life of his victim shall answer for it? And accordingly this man's life did answer for it, — as I have already had occasion to mention to your Lordships.

I will now read Mr. Markham's letter to the Council, in which he enters into the charges against Durbege Sing, after this unhappy man had been imprisoned.

Benares, 24th of October, 1782. — "I am sorry that my duty obliges me to mention to your Honorable Board my apprehensions of a severe loss accruing to the Honorable Company, if Baboo Durbege Sing is continued in the Naibut during the present year. I ground my fears on the knowledge I have had of his mismanagement, the bad choice he has made of his aumils, the mistrust which they have of him, and the several complaints which have been preferred to me by the ryots of almost every purgunnah in the zemindary. I did not choose to waste the time of your Honorable Board in listening to my representations of his inattention to the complaints of oppression which were made to him by his ryots, as I hoped that a letter he received from the Honorable Governor-General would have had weight sufficient to have made him more regular in his business, and more careful of his son's interest."

My Lords, think of the condition of your government in India! Here is a Resident at Benares exercising power not given to him by virtue of his office, but given only by the private orders of the prisoner at your bar. And what is it he does? He says, he

did not choose to trouble the Council with a particular account of his reasons for removing a man who possessed an high office under their immediate appointment. The Council was not to know them: he did not choose to waste the time of their honorable board in listening to the complaints of the people. No: the honorable board is not to have its time wasted in that improper manner; therefore, without the least inquiry or inquisition, the man must be imprisoned, and deprived of his office; he must have all his property confiscated, and be threatened with the loss of his life.

These are crimes, my Lords, for which the Commons of Great Britain knock at the breasts of your consciences, and call for justice. They would think themselves dishonored forever, if they had not brought these crimes before your Lordships, and with the utmost energy demanded your vindictive justice, to the fullest extent in which it can be rendered.

But there are some aggravating circumstances in these crimes, which I have not yet stated. It appears that this unhappy and injured man was, without any solicitation of his own, placed in a situation the duties of which even Mr. Hastings considered it impossible for him to execute. Instead of supporting him with the countenance of the supreme government, Mr. Hastings did everything to lessen his weight, his consequence, and authority. And when the business of the collection became embarrassed, without any fault of his, that has ever yet been proved, Mr. Markham instituted an inquiry. What kind of inquiry it was that would or could be made your Lordships will judge. While this was going on, Mr. Markham tells you, that, in consequence of

orders which he had received, he first put him into a gentle confinement. Your Lordships know what that confinement was; and you know what it is for a man of his rank to be put into any confinement. We have shown he was thereby incapable of transacting business. His life had been threatened, if he should not pay in the balance of his accounts within a short limited time; still he was subjected to confinement, while he had money accounts to settle with the whole country. Could a man in gaol, dishonored and reprobated, take effectual means to recover the arrears which he was called upon to pay? Could he, in such a situation, recover the money which was unpaid to him, in such an extensive district as Benares? Yet Mr. Markham tells the Council he thought proper "that Durbege Sing should be put under a gentle confinement, until I shall receive your Honorable Board's orders for any future measures." Thus Mr. Markham, without any orders from the Council, assumed an authority to do that which we assert a Resident at Benares had no right to do, but to which he was instigated by Mr. Hastings's recommendation that Durbege Sing should be prevented from flight.

Now, my Lords, was it to be expected that a man of Durbege Sing's rank should suffer these hardships and indignities, and at the same time kiss the rod and say, "I have deserved it all"? We know that all mankind revolts at oppression, if it be real; we know that men do not willingly submit to punishment, just or unjust; and we find that Durbege Sing had near relatives, who used for his relief all the power which was left them,— that of remonstrating with his oppressors. Two *arzees*, or petitions, were

presented to the Council, of which we shall first call your Lordships' attention to one from the dowager princess of Benares, in favor of her child and of her family.

From the Ranny, widow of Bulwant Sing. Received the 15th of December, 1782.

"I and my children have no hopes but from your Highness, and our honor and rank are bestowed by you. Mr. Markham, from the advice of my enemies, having protected the farmers, would not permit the balances to be collected. Baboo Durbege Sing frequently before desired that gentleman to show his resentment against the people who owed balances, that the balances might be collected, and to give ease to his mind for the present year, conformably to the requests signed by the presence, that he might complete the *bundobust*. But that gentleman would not listen to him, and, having appointed a *mutsuddy* and *tahsildar*, employs them in the collections of the year, and sent two companies of sepoys and arrested Baboo Durbege Sing upon this charge, that he had secreted in his house many lacs of rupees from the collections, and he carried the mutsuddies and treasurer with their papers to his own presence. He neither ascertained this matter by proofs, nor does he complete the balance of the sircar from the *jaidads* of the balances: right or wrong, he is resolved to destroy our lives. As we have no asylum or hope except from your Highness, and as the Almighty has formed your mind to be a distributor of justice in these times, I therefore hope from the benignity of your Highness, that you will inquire and do justice in this matter, and that an *aumeen* may be ap-

pointed from the presence, that, having discovered the crimes or innocence of Baboo Durbege Sing, he may report to the presence. Further particulars will be made known to your Highness by the arzee of my son Rajah Mehip Narrain Bahadur."

Arzee from Rajah Mehip Narrain Bahadur. Received 15th December, 1782.

"I before this had the honor of addressing several arzees to your presence; but, from my unfortunate state, not one of them has been perused by your Highness, that my situation might be fully learnt by you. The case is this. Mr. Markham, from the advice of my enemies, having occasioned several kinds of losses, and given protection to those who owed balances, prevented the balance from being collected, — for this reason, that, the money not being paid in time, the Baboo might be convicted of inability. From this reason, all the owers of balances refused to pay the *malwajib* of the sircar. Before this, the Baboo had frequently desired that gentleman to show his resentment against the persons who owed the balances, that the balances might be paid, and that his mind might be at ease for the present year, so that the *bundobust* of the present year might be completed, — adding, that, if, next year, such kinds of injuries, and protection of the farmers, were to happen, he should not be able to support it."

I am here to remark to your Lordships, that the last of these petitions begins by stating, "I before this have had the honor of addressing several arzees to your presence; but, from my unfortunate state, not one of them has been perused by your Highness."

My Lords, if there is any one right secured to the subject, it is that of presenting a petition and having that petition noticed. This right grows in importance in proportion to the power and despotic nature of the governments to which the petitioner is subject: for where there is no sort of remedy from any fixed laws, nothing remains but complaint, and prayers, and petitions. This was the case in Benares: for Mr. Hastings had destroyed every trace of law, leaving only the police of the single city of Benares. Still we find this complaint, prayer, and petition was not the first, but only one of many, which Mr. Hastings took no notice of, entirely despised, and never would suffer to be produced to the Council; which never knew anything, until this bundle of papers came before them, of the complaint of Mr. Markham against Durbege Sing, or of the complaint of Durbege Sing against Mr. Markham.

Observe, my Lords, the person that put Durbege Sing in prison was Mr. Markham; while the complaint in the arzee is, that Mr. Markham was himself the cause of the very failure for which he imprisoned him. Now what was the conduct of Mr. Hastings as judge? He has two persons before him: the one in the ostensible care of the revenue of the country; the other his own agent, acting under his authority. The first is accused by the second of default in his payments; the latter is complained of by the former, who says that the occasion of the accusation had been furnished by him, the accuser. The judge, instead of granting redress, dismisses the complaints against Mr. Markham with reprehension, and sends the complainant to rot in prison, without making one inquiry, or giving himself the trouble of stating to Mr. Mark-

ham the complaints against him, and desiring him to clear himself from them. My Lords, if there were nothing but this to mark the treacherous and perfidious nature of his conduct, this would be sufficient.

In this state of things, Mr. Hastings thus writes.

"To Mr. Markham. The measures which you have taken with Baboo Durbege Sing are perfectly right and proper, so far as they go; and we now direct that you exact from him, with the utmost rigor, every rupee of the collections which it shall appear that he has made and not brought to account, and either confine him at Benares, or send him prisoner to Chunar, and keep him in confinement until he shall have discharged the whole of the amount due from him."

He here employs the very person against whom the complaint is made to imprison the complainant. He approves the conduct of his agent without having heard his defence, and leaves him, at his option, to keep his victim a prisoner at Benares, or to imprison him in the fortress of Chunar, the infernal place to which he sends the persons whom he has a mind to extort money from.

Your Lordships will be curious to know how this debt of Durbege Sing stood at the time of his imprisonment. I will state the matter to your Lordships briefly, and in plain language, referring you for the particulars of the account to the papers which are in your Minutes. It appears from them, that, towards the end of the yearly account in 1782, a kist or payment of eight lacs (about 80,000*l.*), the balance of the annual tribute, was due. In part of this kist, Durbege Sing paid two lacs (20,000*l.*). Of the remaining six lacs (60,000*l.*), the outstanding debts in the country due to the revenue, but not collected by

the Naib, amounted to four lacs (40,000*l.*). Thus far the account is not controverted by the accusing party. But Mr. Markham asserts that he *shall* be able to prove that the Naib had also actually received the other two lacs (20,000*l.*), and consequently was an actual defaulter to that amount, and had, upon the whole, suffered the annual tribute to fall six lacs in arrear. The Naib denies the receipt of the two lacs just mentioned, and challenges inquiry; but no inquiries appear to have been made, and to this hour Mr. Markham has produced no proof of the fact. With respect to the arrear of the tribute money which appeared on the balance of the whole account, the Naib defended himself by alleging the distresses of the country, the diminution of his authority, and the want of support from the supreme government in the collection of the revenues; and he asserts that he has assets sufficient, if time and power be allowed him for collecting them, to discharge the whole balance due to the Company. The immediate payment of the whole balance was demanded, and Durbege Sing, unable to comply with the demand, was sent to prison. Thus stood the business, when Mr. Markham, soon after he had sent the Naib to prison, quitted the Residency. He was succeeded by Mr. Benn, who acted exactly upon the same principle. He declares that the six lacs demanded were not demanded upon the principle of its having been actually collected by him, but upon the principle of his having agreed to pay it. "We have," say Mr. Hastings's agents to the Naib, "we have a Jew's bond. If it is in your bond, we will have it, or we will have a pound of your flesh: whether you have received it or not is no business of ours." About this time some hopes were entertained

by the Resident that the Naib's personal exertions in collecting the arrears of the tribute might be useful. These hopes procured him a short liberation from his confinement. He was let out of prison, and appears to have made another payment of half a lac of rupees. Still the terms of the bond were insisted on, although Mr. Hastings had allowed that these terms were extravagant, and only one lac and a half of the money which had been actually received remained unpaid. One would think that common charity, that common decency, that common regard to the decorum of life would, under such circumstances, have hindered Mr. Hastings from imprisoning him again. But, my Lords, he was imprisoned again; he continued in prison till Mr. Hastings quitted the country; and there he soon after died, — a victim to the enormous oppression which has been detailed to your Lordships.

It appears that in the mean time the Residents had been using other means for recovering the balance due to the Company. The family of the Rajah had not been paid one shilling of the 60,000*l.* allowed for their maintenance. They were obliged to mortgage their own hereditary estates for their support, while the Residents confiscated all the property of Durbege Sing. Of the money thus obtained what account has been given? None, my Lords, none. It must therefore have been disposed of in some abominably corrupt way or other, while this miserable victim of Mr. Hastings was left to perish in a prison, after he had been elevated to the highest rank in the country.

But, without doubt, they found abundance of effects after his death? No, my Lords, they did not find anything. They ransacked his house; they examined

all his accounts, every paper that he had, in and out of prison. They searched and scrutinized everything. They had every penny of his fortune, and I believe, though I cannot with certainty know, that the man died insolvent; and it was not pretended that he had ever applied to his own use any part of the Company's money.

Thus Durbege Sing is gone; this tragedy is finished; a second Rajah of Benares has been destroyed. I do not speak of that miserable puppet who was said by Mr. Hastings to be in a state of childhood when arrived at manhood, but of the person who represented the dignity of the family. He is gone; he is swept away; and in his name, in the name of this devoted Durbege Sing, in the name of his afflicted family, in the name of the people of the country thus oppressed by an usurped authority, in the name of all these, respecting whom justice has been thus outraged, we call upon your Lordships for justice.

We are now at the commencement of a new order of things. Mr. Markham had been authorized to appoint whoever he pleased as Naib, with the exception of Ussaun Sing. He accordingly exercises this power, and chooses a person called Jagher Deo Seo. From the time of the confinement of Durbege Sing to the time of this man's being put into the government, in whose hands were the revenues of the country? Mr. Markham himself has told you, at your bar, that they were in his hands, — that he was the person who not only named this man, but that he had the sole management of the revenues; and he was, of course, answerable for them all that time. The nominal title of Zemindar was still left to the miserable pageant who held it; but even the very name soon fell

entirely out of use. It is in evidence before your Lordships that his name is not even so much as mentioned in the proceedings of the government; and that the person who really governed was not the ostensible Jagher Deo Seo, but Mr. Markham. The government, therefore, was taken completely and entirely out of the hands of the person who had a legal right to administer it, — out of the hands of his guardians, — out of the hands of his mother, — out of the hands of his nearest relations, — and, in short, of all those who, in the common course of things, ought to have been intrusted with it. From all such persons, I say, it was taken: and where, my Lords, was it deposited? Why, in the hands of a man of whom we know nothing, and of whom we never heard anything, before we heard that Mr. Markham, of his own usurped authority, authorized by the usurped authority of Mr. Hastings, without the least communication with the Council, had put him in possession of that country.

Mr. Markham himself, as I have just said, administered the revenues alone, without the smallest authority for so doing, without the least knowledge of the Council, till Jagher Deo Seo was appointed Naib. Did he then give up his authority? No such thing. All the measures of Jagher Deo Seo's government were taken with the concurrence and joint management of Mr. Markham. He conducted the whole; the settlements were made, the leases and agreements with farmers all regulated by him. I need not tell you, I believe, that Jagher Deo Seo was not a person of very much authority in the case: your Lordships would laugh at me, if I said he was. The revenue arrangements were, I firmly believe,

regulated and made by Mr. Markham. But whether they were or were not, it comes to the same thing. If they were improperly made and improperly conducted, Mr. Hastings is responsible for the whole of the mismanagement; for he gave the entire control to a person who had little experience, who was young in the world (and this is the excuse I wish to make for a gentleman of that age). He appointed him, and gave him at large a discretionary authority to name whom he pleased to be the ostensible Naib; but we know that he took the principal part himself in all his settlements and in all his proceedings.

Soon after the Naib had been thus appointed and instructed by Mr. Markham, he settled, under his directions, the administration of the country. Mr. Markham then desires leave from Mr. Hastings to go down to Calcutta. I imagine he never returned to Benares; he comes to Europe; and here end the acts of this viceroy and delegate.

Let us now begin the reign of Mr. Benn and Mr. Fowke. These gentlemen had just the same power delegated to them that Mr. Markham possessed,— not one jot less, that I know of; and they were therefore responsible, and ought to have been called to an account by Mr. Hastings for every part of their proceedings. I will not give you my own account of the reign of these gentlemen; but I will read to you what Mr. Hastings has thought proper to represent the state of the people to be under their government. This course will save your Lordships time and trouble; for it will nearly supersede all observations of mine upon the subject. I hold in my hand Mr. Hastings's representation of the effects produced by a government which was conceived by himself, car-

ried into effect by himself, and illegally invested by him with illegal powers, without any security or responsibility of any kind. Hear, I say, what an account Mr. Hastings gave, when he afterwards went up to Benares upon another wicked project, and think what ought to have been his feelings as he looked upon the ruin he had occasioned. Think of the condition in which he saw Benares the first day he entered it. He then saw it beautiful, ornamented, rich, — an object that envy would have shed tears over for its prosperity, that humanity would have beheld with eyes glistening with joy for the comfort and happiness which were there enjoyed by man: a country flourishing in cultivation to such a degree that the soldiers were obliged to march in single files through the fields of corn, to avoid damaging them; a country in which Mr. Stables has stated that the villages were thick beyond all expression; a country where the people pressed round their sovereign, as Mr. Stables also told you, with joy, triumph, and satisfaction. Such was the country; and in such a state and under such a master was it, when he first saw it. See what it now is under Warren Hastings; see what it is under the British government; and then judge whether the Commons are or are not right in pressing the subject upon your Lordships for your decision, and letting you and all this great auditory know what sort of a criminal you have before you, who has had the impudence to represent to your Lordships at your bar that Benares is in a flourishing condition, in defiance of the evidence which we have under his own hands, and who, in all the false papers that have been circulated to debauch the public opinion, has stated that we, the Commons, have given

a false representation as to the state of the country under the English government.

Lucknow, the 2d of April, 1784. *Addressed to the Honorable Edward Wheler, Esq., &c. Signed Warren Hastings. It is in page* 306 *of the printed Minutes.*

"GENTLEMEN,—Having contrived, by making forced stages, while the troops of my escort marched at the ordinary rate, to make a stay of five days at Benares, I was thereby furnished with the means of acquiring some knowledge of the state of the province, which I am anxious to communicate to you: indeed, the inquiry, which was in a great degree obtruded upon me, affected me with very mortifying reflections on my own inability to apply it to any useful purpose.

"From the confines of Buxar to Benares I was followed and fatigued by the clamors of the discontented inhabitants. It was what I expected in a degree, because it is rare that the exercise of authority should prove satisfactory to all who are the objects of it. The distresses which were produced by the long continued drought unavoidably tended to heighten the general discontent; yet I have reason to fear that the cause existed principally in a defective, if not a corrupt and oppressive administration. Of a multitude of petitions which were presented to me, and of which I took minutes, every one that did not relate to a personal grievance contained the representation of one and the same species of oppression, which is in its nature of an influence most fatal to the future cultivation. The practice to which I allude is this. It is affirmed that the aumils and renters exact from the proprietors of the actual harvest a large increase in

kind on their stipulated rent: that is, from those who hold their pottahs by the tenure of paying one half of the produce of their crops, either the whole without a subterfuge, or a large proportion of it by false measurement or other pretexts; and from those whose engagements are for a fixed rent in money the half or a greater proportion is taken in kind. This is in effect a tax upon the industry of the inhabitants; since there is scarcely a field of grain in the province, I might say not one, which has not been preserved by the incessant labor of the cultivator, by digging wells for their supply, or watering them from the wells of masonry with which this country abounds, or from the neighboring tanks, rivers, and nullahs. The people who imposed on themselves this voluntary and extraordinary labor, and not unattended with expense, did it in the expectation of reaping the profits of it; and it is certain that they would not have done it, if they had known that their rulers, from whom they were entitled to an indemnification, would take from them what they had so hardly earned. If the same administration continues, and the country shall again labor under a want of the natural rains, every field will be abandoned, the revenue fail, and thousands perish through the want of subsistence: for who will labor for the sole benefit of others, and to make himself the subject of vexation? These practices are not to be imputed to the aumils employed in the districts, but to the Naib himself. The avowed principle on which he acts, and which he acknowledged to myself, is, that the whole sum fixed for the revenue of the province must be collected, and that for this purpose the deficiency arising in places where the crops have failed, or which have been left uncul-

tivated, must be supplied from the resources of others, where the soil has been better suited to the season, or the industry of the cultivators more successfully exerted: a principle which, however specious and plausible it may at first appear, certainly tends to the most pernicious and destructive consequences. If this declaration of the Naib had been made only to myself, I might have doubted my construction of it; but it was repeated by him to Mr. Anderson, who understood it exactly in the same sense. In the management of the customs, the conduct of the Naib, or of the officers under him, was forced also upon my attention. The exorbitant rates exacted by an arbitrary valuation of the goods, the practice of exacting duties twice on the same goods, first from the seller and afterwards from the buyer, and the vexatious disputes and delays drawn on the merchants by these oppressions, were loudly complained of; and some instances of this kind were said to exist at the very time when I was in Benares. Under such circumstances, we are not to wonder, if the merchants of foreign countries are discouraged from resorting to Benares, and if the commerce of that province should annually decay.

"Other evils, or imputed evils, have accidentally come to my knowledge, which I will not now particularize, as I hope that with the assistance of the Resident they may be in part corrected: one, however, I must mention, because it has been verified by my own observation, and is of that kind which reflects an unmerited reproach on our general and national character. When I was at Buxar, the Resident at my desire enjoined the Naib to appoint creditable people to every town through which our route lay, to persuade and encourage the inhabitants to remain in their houses,

promising to give them guards as I approached, and they required it for their protection; and that he might perceive how earnest I was for his observance of this precaution, (which I am certain was faithfully delivered,) I repeated it to him in person, and dismissed him, that he might precede me for that purpose: but, to my great disappointment, I found every place through which I passed abandoned; nor had there been a man left in any of them for their protection. I am sorry to add, that, from Buxar to the opposite boundary, I have seen nothing but the traces of complete devastation in every village, whether caused by the followers of the troops which have lately passed, for their natural relief, (and I know not whether my own may not have had their share,) or from the apprehension of the inhabitants left to themselves, and of themselves deserting their houses. I wish to acquit my own countrymen of the blame of these unfavorable appearances, and in my own heart I do acquit them: for at one encampment, near a large village called Derrara, in the purgunnah of Zemaneea, a crowd of people came to me, complaining that their former aumil, who was a native of the place, and had long been established in authority over them, and whose custom it had been, whenever any troops passed, to remain in person on the spot for their protection, having been removed, the new aumil, on the approach of any military detachment, himself first fled from the place, and the inhabitants, having no one to whom they could apply for redress, or for the representation of their grievances, and being thus remediless, fled also; so that their houses and effects became a prey to any person who chose to plunder them. The general conclusion appeared to me an inevitable

consequence from such a state of facts, — and my own senses bore testimony to it in this specific instance; nor do I know how it is possible for any officer commanding a military party, how attentive soever he may be to the discipline and forbearance of his people, to prevent disorders, when there is neither opposition to hinder nor evidence to detect them. These and many other irregularities I impute solely to the Naib; and I think it my duty to recommend his instant removal. I would myself have dismissed him, had the control of this province come within the line of my powers, and have established such regulations and checks as would have been most likely to prevent the like irregularities. I have said checks, because, unless there is some visible influence, and a powerful and able one, impended over the head of the manager, no system can avail. The next appointed may prove, from some defect, as unfit for the office as the present; for the choice is limited to few, without experience to guide it. The first was of my own nomination; his merits and qualifications stood in equal balance with my knowledge of those who might have been the candidates for the office; but he was the father of the Rajah, and the affinity sunk the scale wholly in his favor: for who could be so fit to be intrusted with the charge of his son's interest, and the new credit of the rising family? He deceived my expectations. Another was recommended by the Resident, and at my instance the board appointed him. This was Jagher Deo Seo, the present Naib. I knew him not, and the other members of the board as little. While Mr. Markham remained in office, of whom, as his immediate patron, he may have stood in awe, I am told that he re-

strained his natural disposition, which has been described to me as rapacious, unfeeling, haughty, and to an extreme vindictive.

"I cannot avoid remarking, that, excepting the city of Benares itself, the province depending upon it is in effect without a government, the Naib exercising only a dependent jurisdiction without a principal. The Rajah is without authority, and even his name disused in the official instruments issued or taken by the manager. The representation of his situation shall be the subject of another letter; I have made this already too long, and shall confine it to the single subject for the communication of which it was begun. This permit me to recapitulate. The administration of the province is misconducted, and the people oppressed; trade discouraged, and the revenue, though said to be exceeded in the actual collections by many lacs, (for I have a minute account of it, which states the net amount, including jaghires, as something more than fifty-one lacs,) in danger of a rapid decline, from the violent appropriation of its means; the Naib or manager is unfit for his office; a new manager is required, and a system of official control, — in a word, a constitution: for neither can the board extend its superintending powers to a district so remote from its observation, nor has it delegated that authority to the Resident, who is merely the representative of government, and the receiver of its revenue in the last process of it; nor, indeed, would it be possible to render him wholly so, for reasons which I may hereafter detail."

My Lords, you have now heard — not from the Managers, not from records of office, not from wit-

nesses at your bar, but from the prisoner himself — the state of the country of Benares, from the time that Mr. Hastings and his delegated Residents had taken the management of it. My Lords, it is a proof, beyond all other proof, of the melancholy state of the country, in which, by attempting to exercise usurped and arbitrary power, all power and all authority become extinguished, complete anarchy takes place, and nothing of government appears but the means of robbing and ravaging, with an utter indisposition to take one step for the protection of the people.

Think, my Lords, what a triumphal progress it was for a British governor, from one extremity of the province to the other, (for so he has stated it,) to be pursued by the cries of an oppressed and ruined people, where they dared to appear before him, — and when they did not dare to appear, flying from every place, even the very magistrates being the first to fly! Think, my Lords, that, when these unhappy people saw the appearance of a British soldier, they fled as from a pestilence; and then think, that these were the people who labored in the manner which you have just heard, who dug their own wells, whose country would not produce anything but from the indefatigable industry of its inhabitants; and that such a meritorious, such an industrious people, should be subjected to such a cursed anarchy under pretence of revenue, to such a cursed tyranny under the pretence of government!

"But Jagher Deo Seo was unfit for his office." — "How dared you to appoint a man unfit for his office?" — "Oh, it signified little, without their having a constitution." — "Why did you destroy the official constitution that existed before? How dared you

to destroy those establishments which enabled the people to dig wells and to cultivate the country like a garden, and then to leave the whole in the hands of your arbitrary and wicked Residents and their instruments, chosen without the least idea of government and without the least idea of protection?"

God has sometimes converted wickedness into madness; and it is to the credit of human reason, that men who are not in some degree mad are never capable of being in the highest degree wicked. The human faculties and reason are in such cases deranged; and therefore this man has been dragged by the just vengeance of Providence to make his own madness the discoverer of his own wicked, perfidious, and cursed machinations in that devoted country.

Think, my Lords, of what he says respecting the military. He says there is no restraining them, — that they pillage the country wherever they go. But had not Mr. Hastings himself just before encouraged the military to pillage the country? Did he not make the people's resistance, when the soldiers attempted to pillage them, one of the crimes of Cheyt Sing? And who would dare to obstruct the military in their abominable ravages, when they knew that one of the articles of Cheyt Sing's impeachment was his having suffered the people of the country, when plundered by these wicked soldiers, to return injury for injury and blow for blow? When they saw, I say, that these were the things for which Cheyt Sing was sacrificed, there was manifestly nothing left for them but flight, — What! fly from a Governor-General? You would expect he was bearing to the country, upon his balmy and healing wings, the cure of all its disorders and of all its distress. No: they knew him too well;

they knew him to be the destroyer of the country; they knew him to be the destroyer of their sovereign, the destroyer of the persons whom he had appointed to govern under him; they knew that neither governor, sub-governor, nor subject could enjoy a moment's security while he possessed supreme power. This was the state of the country; and this the Commons of England call upon your Lordships to avenge.

Let us now see what is next done by the prisoner at your bar. He is satisfied with simply removing from his office Jagher Deo Seo, who is accused by him of all these corruptions and oppressions. The other poor, unfortunate man, who was not even accused of malversations in such a degree, and against whom not one of the accusations of oppression was regularly proved, but who had, in Mr. Hastings's eye, the one unpardonable fault of not having been made richer by his crimes, was twice imprisoned, and finally perished in prison. But we have never heard one word of the imprisonment of Jagher Deo Seo, who, I believe, after some mock inquiry, was acquitted.

Here, my Lords, I must beg you to recollect Mr. Hastings's proceeding with Gunga Govind Sing, and to contrast his conduct towards these two peculators with his proceeding towards Durbege Sing. Such a comparison will let your Lordships into the secret of one of the prisoner's motives of conduct upon such occasions. When you will find a man pillaging and desolating a country, in the manner Jagher Deo Seo is described by Mr. Hastings to have done, but who takes care to secure to himself the spoil, you will likewise find that such a man is safe, secure, unpunished. Your Lordships will recollect the desolation

of Dinagepore. You will recollect that the rapacious Gunga Govind Sing, (the coadjutor of Mr. Hastings in peculation,) out of 80,000*l.* which he had received on the Company's account, retained 40,000*l.* for his own use, and that, instead of being turned out of his employment and treated with rigor and cruelty, he was elevated in Mr. Hastings's grace and favor, and never called upon for the restoration of a penny. Observe, my Lords, the difference in his treatment of men who have wealth to purchase impunity, or who have secrets to reveal, and of another who has no such merit, and is poor and insolvent.

We have shown your Lordships the effects of Mr. Hastings's government upon the country and its inhabitants; and although I have before suggested to you some of its effects upon the army of the Company, I will now call your attention to a few other observations on that subject. Your Lordships will, in the first place, be pleased to attend to the character which he gives of this army. You have heard what he tells you of the state of the country in which it was stationed, and of the terror which it struck into the inhabitants. The appearance of an English soldier was enough to strike the country people with affright and dismay: they everywhere, he tells you, fled before them. And yet they are the officers of this very army who are brought here as witnesses to express the general satisfaction of the people of India. To be sure, a man who never calls Englishmen to an account for any robbery or injury whatever, who acquits them, upon their good intentions, without any inquiry, will in return for this indemnity have their good words. We are not surprised to find them coming with emulation to your bar to declare

him possessed of all virtues, and that nobody has or can have a right to complain of him. But we, my Lords, protest against these indemnities; we protest against their good words; we protest against their testimonials; and we insist upon your Lordships trying him, not upon what this or that officer says of his good conduct, but upon the proved result of the actions tried before you. Without ascribing, perhaps, much guilt to men who must naturally wish to favor the person who covers their excesses, who suffers their fortunes to be made, you will know what value to set upon their testimony. The Commons look on those testimonies with the greatest slight, and they consider as nothing all evidence given by persons who are interested in the very cause, — persons who derive their fortunes from the ruin of the very people of the country, and who have divided the spoils with the man whom we accuse. Undoubtedly these officers will give him their good word. Undoubtedly the Residents will give him their good word. Mr. Markham, and Mr. Benn, and Mr. Fowke, if he had been called, every servant of the Company, except some few, will give him the same good word, every one of them; because, my Lords, they have made their fortunes under him, and their conduct has not been inquired into.

But to return to the observations we were making upon the ruinous effects in general of the successive governments which had been established at Benares by the prisoner at your bar. These effects, he would have you believe, arose from the want of a constitution. Why, I again ask, did he destroy the constitution which he found established there, or suffer it to be destroyed? But he had actually authorized Mr.

Markham to make a new, a regular, an official constitution. Did Mr. Markham make it? No: though he professed to do it, it never was done: and so far from there being any regular, able, efficient constitution, you see there was an absolute and complete anarchy in the country. The native inhabitants, deprived of their ancient government, were so far from looking up to their new masters for protection, that, the moment they saw the face of a soldier or of a British person in authority, they fled in dismay, and thought it more eligible to abandon their houses to robbery than to remain exposed to the tyranny of a British governor. Is this what they call British dominion? Will you sanction by your judicial authority transactions done in direct defiance of your legislative authority? Are they so injuriously mad as to suppose your Lordships can be corrupted to betray in your judicial capacity (the most sacred of the two) what you have ordained in your legislative character?

My Lords, I am next to remind you what this man has had the insolence and audacity to state at your bar. "In fact," says he, "I can adduce very many gentlemen now in London to confirm my assertions, that the countries of Benares and Gazipore were never within the memory of Englishmen so well protected, so peaceably governed, or more industriously cultivated than at the present moment."

Your Lordships know that this report of Mr. Hastings which has been read was made in the year 1784. Your Lordships know that no step was taken, while Mr. Hastings remained in India, for the regulation and management of the country. If there was, let it be shown. There was no constitution framed, nor

any other means taken for the settlement of the country, except the appointment of Ajeet Sing in the room of Durbege Sing, to reign like him, and like him to be turned out. Mr. Hastings left India in February, 1785; he arrived here, as I believe, in June or July following. Our proceedings against him commenced in the sessions of 1786; and this defence was given, I believe, in the year 1787. Yet at that time, when he could hardly have received any account from India, he was ready, he says, to produce the evidence (and no doubt might have done so) of many gentlemen whose depositions would have directly contradicted what he had himself deposed of the state in which he, so short a time before, had left the country. Your Lordships cannot suppose that it could have recovered its prosperity within that time. We know you may destroy that in a day which will take up years to build; we know a tyrant can in a moment ruin and oppress: but you cannot restore the dead to life; you cannot in a moment restore fields to cultivation; you cannot, as you please, make the people in a moment restore old or dig new wells: and yet Mr. Hastings has dared to say to the Commons that he would produce persons to refute the account which we had fresh from himself. We will, however, undertake to show you that the direct contrary was the fact.

I will first refer you to Mr. Barlow's account of the state of trade. Your Lordships will there find a full exposure of the total falsehood of the prisoner's assertions. You will find that Mr. Hastings himself had been obliged to give orders for the change of almost every one of the regulations he had made. Your Lordships may there see the madness and folly

of tyranny attempting to regulate trade. In the printed Minutes, page 2830, your Lordships will see how completely Mr. Hastings had ruined the trade of the country. You will find, that, wherever he pretended to redress the grievances which he had occasioned, he did not take care to have any one part of his pretended redress executed. When you consider the anarchy in which he states the country through which he passed to have been, you may easily conceive that regulations for the protection of trade, without the means of enforcing them, must be nugatory.

Mr. Barlow was sent, in the years 1786 and 1787, to examine into the state of the country. He has stated the effect of all those regulations, which Mr. Hastings has had the assurance to represent here as prodigies of wisdom. At the very time when our charge was brought to this House, (it is a remarkable period, and we desire your Lordships to advert to it,) at that time, I do not know whether it was not on the very same day that we brought our charge to your bar, Mr. Duncan was sent by Lord Cornwallis to examine into the state of that province. Now, my Lords, you have Mr. Duncan's report before you, and you will judge whether or not, by any regulation which Mr. Hastings had made, or whether through *any* means used by him, that country had recovered or was recovering. Your Lordships will there find other proofs of the audacious falsehood of his representation, that all which he had done had operated on the minds of the inhabitants very greatly in favor of British integrity and good government. Mr. Duncan's report will not only enable you to decide upon what he has said himself, it will likewise enable you to judge of the credit which is due to the gentlemen

now in London whom he can produce to confirm his assertions, that the country of Benares and Gazipore were never, within the memory of Englishmen, so well protected and cultivated as at the present moment.

Instead, therefore, of a speech from me, you shall hear what the country says itself, by the report of the last commissioner who was sent to examine it by Lord Cornwallis. The perfect credibility of his testimony Mr. Hastings has established out of Lord Cornwallis's mouth, who, being asked the character of Mr. Jonathan Duncan, has declared that there is nothing he can report of the state of the country to which you ought not to give credit. Your Lordships will now see how deep the wounds are which tyranny and arbitrary power must make in a country where their existence is suffered; and you will be pleased to observe that this statement was made at a time when Mr. Hastings was amusing us with *his* account of Benares.

Extract of the Proceedings of the Resident at Benares, under date the 16*th February*, 1788, *at the Purgunnah of Gurrah Dehmah, &c. Printed Minutes, page* 2610.

"The Resident, having arrived in this purgunnah of Gurrah Dehmah from that of Mohammedabad, is very sorry to observe that it seems about one third at least uncultivated, owing to the mismanagement of the few last years. The Rajah, however, promises that it shall be by next year in a complete state of cultivation; and Tobarck Hossaine, his aumeen, aumil, or agent, professes his confidence of the same happy effects, saying, that he has already brought a great proportion of the land, that lay fallow when he

came into the purgunnah in the beginning of the year, into cultivation, and that, it being equally the Rajah's directions and his own wish, he does not doubt of being successful in regard to the remaining part of the waste land."

Report, dated the 18th of February, at the Purgunnah of Bulleah.

"The Resident, having come yesterday into this purgunnah from that of Gurrah Dehmah, finds its appearance much superior to that purgunnah in point of cultivation; yet it is on the decline so far that its collectible jumma will not be so much this year as it was last, notwithstanding all the efforts of Reazel Husn, the agent of Khulb Ali Khân, who has farmed this purgunnah upon a three years' lease, (of which the present is the last,) during which his, that is, the head farmer's, management cannot be applauded, as the funds of the purgunnah are very considerably declined in his hands: indeed, Reazel Husn declares that this year there was little or no *khereef*, or first harvest, in the purgunnah, and that it has been merely by the greatest exertions that he has prevailed on the ryots to cultivate the *rubby* crop, which is now on the ground and seems plentiful."

Report, dated the 20th of February, at the Purgunnah of Khereed.

"The Resident, having this day come into the purgunnah of Khereed, finds that part of it laying between the frontiers of Bulleah, the present station, and Bansdeah, (which is one of the *tuppahs*, or subdivisions, of Khereed,) exceedingly wasted and uncultivated. The said tuppah is sub-farmed by Gobind

Ram from Kulub Ali Bey, and Gobind Ram has again under-rented it to the zemindars."

Report, dated the 23d February, at the Purgunnah of Sekunderpoor.

"The Resident is set out for Sekunderpoor, and is sorry to observe, that, for about six or seven coss that he had further to pass through the purgunnah of Kereebs, the whole appeared one continued waste, as far as the eye could reach, on both sides of the road. The purgunnah Sekunderpoor, beginning about a coss before he reached the village, an old fort of that name, appeared to a little more advantage; but even here the crops seem very scanty, and the ground more than half fallow."

Extract of the Proceedings of the Resident at Benares, under date the 26th February, at the Purgunnah of Sekunderpoor.

"The Resident now leaves Sekunderpoor to proceed to Nurgurah, the head cutchery of the purgunnah. He is sorry to observe, that, during the whole way between these two places, which are at the distance of six coss, or twelve miles, from each other, not above twenty fields of cultivated ground are to be seen; all the rest being, as far as the eye can reach, except just in the vicinity of Nuggeha, one general waste of long grass, with here and there some straggling jungly trees. This falling off in the cultivation is said to have happened in the course of but a few years, — that is, since the late Rajah's expulsion."

Your Lordships will observe, the date of the ruin of this country is the expulsion of Cheyt Sing.

Extract of the Proceedings of the Resident at Benares, under date the 27th February, at the Purgunnah Sekunderpoor.

"The Resident meant to have proceeded from this place to Cossimabad; but understanding that the village of Ressenda, the capital of the purgunnah of Susknesser, is situated at three coss' distance, and that many *rahdarry* collections are there exacted, the zemindars and ryots being, it seems, all one body of Rajpoots, who affect to hold themselves in some sort independent of the Rajah's government, paying only a *mokurrery*, or fixed jumma, (which it may be supposed is not overrated,) and managing their interior concerns as they think fit, the Resident thought it proper on this report to deviate a little from his intended route, by proceeding this day to Ressenda, where he accordingly arrived in the afternoon; and the remaining part of the country near the road through Sekunderpoor, from Nuggurha to Seundah, appearing nearly equally waste with the former part, as already noticed in the proceedings of the 26th instant.

"The Rajah is therefore desired to appoint a person to bring those waste lands into cultivation, in like manner as he has done in Khereed, with this difference or addition in his instructions, — that he subjoin in those to the Aband Kar, or manager, of the re-cultivation of Sekunderpoor, the rates at which he is authorized to grant pottahs for the various kinds of land; and it is recommended to him to make these rates even somewhat lower than he may himself think strictly conformable to justice, reporting the particulars to the Resident.

"The Rajah is also desired to prepare and transmit a table of similar rates to the Aband Kar of purgunnah Khereed.

(Signed) "JON^N DUNCAN, *Resident.*

"BENARES, the 12th September, 1788."

Here your Lordships find, in spite of Mr. Hastings himself, in spite of all the testimonies which he has called, and of all the other testimonies which he would have called, that his own account of the matter is confirmed against his own pretended evidence; you find his own written account confirmed in a manner not to be doubted: and the only difference between his account and this is, that the people did not fly from Mr. Duncan, when he approached, as they fled from Mr. Hastings. They did not feel any of that terror at the approach of a person from the beneficent government of Lord Cornwallis with which they had been entirely filled at the appearance of the prisoner at your bar. From him they fled in dismay. They fled from his very presence, as from a consuming pestilence, as from something far worse than drought and famine; they fled from him as a cruel, corrupt, and arbitrary governor, which is worse than any other evil that ever afflicted mankind.

You see, my Lords, in what manner the country has been wasted and destroyed; and you have seen, by the date of these measures, that they have happened within a few years, namely, since the expulsion of Rajah Cheyt Sing. There begins the era of calamity. Ask yourselves, then, whether you will or can countenance the acts which led directly and necessarily to such consequences. Your Lordships will mark what it is to oppress and expel a cherished in-

dividual from his government, and finally to subvert it. Nothing stands after him; down go all order and authority with him; ruin and desolation fall upon the country; the fields are uncultivated, the wells are dried up. The people, says Mr. Duncan, promised, indeed, some time or other, under some other government, to do something. They will again cultivate the lands, when they can get an assurance of security. My Lords, judge, I pray you, whether the House of Commons, when they had read the account which Mr. Hastings has himself given of the dreadful consequences of his proceedings, when they had read the account given by Mr. Duncan of an uncultivated country as far as the eye could reach, would not have shown themselves unworthy to represent not only the Commons of Great Britain, but the meanest village in it, if they had not brought this great criminal before you, and called upon your Lordships to punish him. This ruined country, its desolate fields and its undone inhabitants, all call aloud for British justice, all call for vengeance upon the head of this execrable criminal.

Oh! but we ought to be tender towards his personal character, — extremely cautious in our speech; we ought not to let indignation loose. — My Lords, we do let our indignation loose; we cannot bear with patience this affliction of mankind. We will neither abate our energy, relax in our feelings, nor in the expressions which those feelings dictate. Nothing but corruption like his own could enable any man to see such a scene of desolation and ruin unmoved. We feel pity for the works of God and man; we feel horror for the debasement of human nature; and feeling thus, we give a loose to our indignation, and call upon your Lordships for justice.

Strange as it may appear to your Lordships, there remains to be stated an aggravation of his crimes, and of his victims' misery. Would you consider it possible, my Lords, that there could be an aggravation of such a case as you have heard? Would you think it possible for a people to suffer more than the inhabitants of Benares have suffered, from the noble possessor of the splendid mansion down to the miserable tenants of the cottage and the hut? Yes, there is a state of misery, a state of degradation, far below all that you have yet heard. It is, my Lords, that these miserable people should come to your Lordships' bar, and declare that they have never felt one of those grievances of which they complain; that not one of those petitions with which they pursued Mr. Hastings had a word of truth in it; that they felt nothing under his government but ease, tranquillity, joy, and happiness; that every day during his government was a festival, and every night an illumination and rejoicing. The addresses which contain these expressions of satisfaction have been produced at your bar, and have been read to your Lordships. You must have heard with disgust, at least, these flowers of Oriental rhetoric, penned at ease by dirty hireling moonshees at Calcutta, who make these people put their seals, not to declarations of their ruin, but to expressions of their satisfaction. You have heard what he himself says of the country; you have heard what Mr. Duncan says of it; you have heard the cries of the country itself calling for justice upon him: and now, my Lords, hear what he has made these people say. "We have heard that the gentlemen in England are displeased with Mr. Hastings, on suspicion that he oppressed us, the

inhabitants of this place, took our money by deceit and force, and ruined the country." They then declare solemnly before God, according to their different religions, that Mr. Hastings "distributed protection and security to religion, and kindness and peace to all. He is free," say they, "from the charge of embezzlement and fraud, and his heart is void of covetousness and avidity. During the period of his government no one ever experienced from him other than protection and justice, never having felt hardships from him; nor did the poor ever know the weight of an oppressive hand from him. Our characters and reputation have been always guarded in quiet from attack, by the vigilance of his prudence and foresight, and by the terror of his justice."

Upon my word, my Lords, the paragraphs are delightful. Observe, in this translation from the Persian there is all the fluency of an English paragraph well preserved. All I can say is, that these people of Benares feel their joy, comfort, and satisfaction in swearing to the falseness of Mr. Hastings's representation against himself. In spite of his own testimony, they say, "He secured happiness and joy to us; he reëstablished the foundation of justice; and we at all times, during his government, lived in comfort and passed our days in peace." The shame of England and of the English government is here put upon your Lordships' records. Here you have, just following that afflicting report of Mr. Duncan's, and that account of Mr. Hastings himself, in which he said the inhabitants fled before his face, the addresses of these miserable people. He dares to impose upon your eyesight, upon your common sense, upon the plain faculties of mankind. He dares, in contra-

diction to all his own assertions, to make these people come forward and swear that they have enjoyed nothing but complete satisfaction and pleasure during the whole time of his government.

My Lords, I have done with this business, for I have now reached the climax of degradation and suffering, after moving step by step through the several stages of tyranny and oppression. I have done with it, and have only to ask, In what country do we live, where such a scene can by any possibility be offered to the public eye?

Let us here, my Lords, make a pause. — You have seen what Benares was under its native government. You have seen the condition in which it was left by Cheyt Sing, and you have seen the state in which Mr. Hastings left it. The rankling wounds which he has inflicted upon the country, and the degradation to which the inhabitants have been subjected, have been shown to your Lordships. You have now to consider whether or not you will fortify with your sanction any of the detestable principles upon which the prisoner justifies his enormities.

My Lords, we shall next come to another depend ent province, when I shall illustrate to your Lordships still further the effects of Mr. Hastings's principles. I allude to the province of Oude, — a country which, before our acquaintance with it, was in the same happy and flourishing condition with Benares, and which dates its period of decline and misery from the time of our intermeddling with it. The Nabob of Oude was reduced, as Cheyt Sing was, to be a dependant on the Company, and to be a greater dependant than Cheyt Sing, because it was reserved in Cheyt Sing's agreement that we should not in-

terfere in his government. We interfered in every part of the Nabob's government; we reduced his authority to nothing; we introduced a perfect scene of anarchy and confusion into the country, where there was no authority but to rob and destroy.

I have not strength at present to proceed; but I hope I shall soon be enabled to do so. Your Lordships cannot, I am sure, calculate from your own youth and strength; for I have done the best I can, and find myself incapable just at this moment of going any further.

SPEECH

IN

GENERAL REPLY.

FOURTH DAY: THURSDAY, JUNE 5, 1794.

MY LORDS,—When I last had the honor of addressing your Lordships from this place, my want of strength obliged me to conclude where the patience of a people and the prosperity of a country subjected by solemn treaties to British government had concluded. We have left behind us the inhabitants of Benares, after having seen them driven into rebellion by tyranny and oppression, and their country desolated by our misrule. Your Lordships, I am sure, have had the map of India before you, and know that the country so destroyed and so desolated was about one fifth of the size of England and Wales in geographical extent, and equal in population to about a fourth. Upon this scale you will judge of the mischief which has been done.

My Lords, we are now come to another devoted province: we march from desolation to desolation; because we follow the steps of Warren Hastings, Esquire, Governor-General of Bengal. You will here find the range of his atrocities widely extended; but before I enter into a detail of them, I have one reflection to make, which I beseech your Lordships to bear in mind throughout the whole of this deliberation. It is this: you ought never to conclude that a man

must necessarily be innoxious because he is in other respects insignificant. You will see that a man bred in obscure, vulgar, and ignoble occupations, and trained in sordid, base, and mercenary habits, is not incapable of doing extensive mischief, because he is little, and because his vices are of a mean nature. My Lords, we have shown to you already, and we shall demonstrate to you more clearly in future, that such minds placed in authority can do more mischief to a country, can treat all ranks and distinctions with more pride, insolence, and arrogance, than those who have been born under canopies of state and swaddled in purple: you will see that they can waste a country more effectually than the proudest and most mighty conquerors, who, by the greatness of their military talents, have first subdued and afterwards plundered nations.

The prisoner's counsel have thought proper to entertain your Lordships, and to defend their client, by comparing him with the men who are said to have erected a pyramid of ninety thousand human heads. Now look back, my Lords, to Benares; consider the extent of country laid waste and desolated, and its immense population; and then see whether famine may not destroy as well as the sword, and whether this man is not as well entitled to erect his pyramid of ninety thousand heads as any terrific tyrant of the East. We follow him now to another theatre, the territories of the Nabob of Oude.

My Lords, Oude, (together with the additions made to it by Sujah Dowlah,) in point of geographical extent, is about the size of England. Sujah Dowlah, who possessed this country as Nabob, was a prince of a haughty character, — ferocious in a high degree to-

wards his enemies, and towards all those who resisted his will. He was magnificent in his expenses, yet economical with regard to his resources, — maintaining his court in a pomp and splendor which is perhaps unknown to the sovereigns of Europe. At the same time he was such an economist, that from an inconsiderable revenue, at the beginning of his reign, he was annually enabled to make great savings. He thus preserved, towards the end of it, his people in peace, tranquillity, and order; and though he was an arbitrary prince, he never strained his revenue to such a degree as to lose their affections while he filled his exchequer. Such appears to have been the true character of Sujah Dowlah: your Lordships have heard what is the character which the prisoner at your bar and his counsel have thought proper to give you of him.

Surely, my Lords, the situation of the great, as well as of the lower ranks in that country, must be a subject of melancholy reflection to every man. Your Lordships' compassion will, I presume, lead you to feel for the lowest; and I hope that your sympathetic dignity will make you consider in what manner the princes of this country are treated. They have not only been treated at your Lordships' bar with indignity by the prisoner, but his counsel do not leave their ancestors to rest quietly in their graves. They have slandered their families, and have gone into scandalous history that has no foundation in facts whatever.

Your Lordships have seen how he attempted to slander the ancestors of Cheyt Sing, to deny that they were zemindars; and yet he must have known from printed books, taken from the Company's records,

the utter falsity of his declaration. You need only look into Mr. Verelst's Appendix, and there you will see that that country has always been called the Zemindary of Bulwant Sing. You will find him always called the Zemindar; it was the known, acknowledged name, till this gentleman thought proper at the bar of the House of Commons to deny that he was a zemindar, and to assert that he was only an aumil. He slanders the pedigree of this man as mean and base, yet he was not ashamed to take from him twenty-three thousand pounds. In like manner he takes from Asoph ul Dowlah a hundred thousand pounds, which he would have appropriated to himself, and then directs his counsel to rake up the slander of Dow's History, a book of no authority, a book that no man values in any respect or degree. In this book they find that romantic, absurd, and ridiculous story upon which an honorable fellow Manager of mine, who is much more capable than I am of doing justice to the subject, has commented with his usual ability: I allude to that story of spitting on the beard, — the mutual compact to poison one another. That Arabian tale, fit only to form a ridiculous tragedy, has been gravely mentioned to your Lordships for the purpose of slandering the pedigree of this Vizier of Oude, and making him vile in your Lordships' eyes. My honorable friend has exposed to you the absurdity of these stories, but he has not shown you the malice of their propagators. The prisoner and his counsel have referred to Dow's History, who calls this Nabob "the more infamous son of an infamous Persian peddler." They wish that your Lordships should consider him as a person vilely born, ignominiously educated, and practising a mean trade,

in order that, when it shall be proved that he and his family were treated with every kind of indignity and contempt by the prisoner at your bar, the sympathy of mankind should be weakened. Consider, my Lords, the monstrous perfidy and ingratitude of this man, who, after receiving great favors from the Nabob, is not satisfied with oppressing his offspring, but goes back to his ancestors, tears them out of their graves, and vilifies them with slanderous aspersions. My Lords, the ancestor of Sujah Dowlah was a great prince, — certainly a subordinate prince, because he was a servant of the Great Mogul, who was well called King of Kings, for he had in his service persons of high degree. He was born in Persia; but was not, as is falsely said, *the more infamous son of an infamous Persian peddler*. Your Lordships are not unacquainted with the state and history of India; you therefore know that Persia has been the nursery of all the Mahometan nobility of India: almost everything in that country which is not of Gentoo origin is of Persian; so much so, that the Persian language is the language of the court, and of every office from the highest to the lowest. Among these noble Persians, the family of the Nabob stands in the highest degree. His father's ancestors were of noble descent, and those of his mother, Munny Begum, more eminently and more illustriously so. This distinguished family, on no better authority than that of the historian Dow, has been slandered by the prisoner at your bar, in order to destroy the character of those whom he had already robbed of their substance. Your Lordships will have observed with disgust how the Dows and the Hastings, and the whole of that tribe, treat their superiors, — in what insolent language

they speak of them, and with what pride and indignity they trample upon the first names and the first characters in that devoted country.

But supposing it perfectly true that this man was "the more infamous son of an infamous Persian peddler," he had risen to be the secondary sovereign of that country. He had a revenue of three millions six hundred thousand pounds sterling: a vast and immense revenue; equal, perhaps, to the clear revenue of the King of England. He maintained an army of one hundred and twenty thousand men. He had a splendid court; and his country was prosperous and happy. Such was the situation of Sujah Dowlah, the Nabob of Oude, and such the condition of Oude under his government. With his pedigree, I believe, your Lordships will think we have nothing to do in the cause now before us. It has been pressed upon us; and this marks the indecency, the rancor, the insolence, the pride and tyranny which the Dows and the Hastings, and the people of that class and character, are in the habit of exercising over the great in India.

My Lords, I shall be saved a great deal of trouble in proving to you the flourishing state of Oude, because the prisoner admits it as largely as I could wish to state it; and what is more, he admits, too, the truth of our statement of the condition to which it is now reduced, — but I shall not let him off so easily upon this point. He admits, too, that it was left in this reduced and ruined state at the close of his administration. In his Defence he attributes the whole mischief generally to a faulty system of government. My Lords, systems never make mankind happy or unhappy, any further than as they give occasions for

wicked men to exercise their own abominable talents, subservient to their own more abominable dispositions. "The system," says Mr. Hastings, "was bad; but I was not the maker of it." Your Lordships have seen him apply this mode of reasoning to Benares, and you will now see that he applies it to Oude. "I came," says he, "into a bad system; that system was not of my making, but I was obliged to act according to the spirit of it."

Now every honest man would say,—"I came to a bad system: I had every facility of abusing my power, I had every temptation to peculate, I had every incitement to oppress, I had every means of concealment, by the defects of the system; but I corrected that evil system by the goodness of my administration, by the prudence, the energy, the virtue of my conduct." This is what all the rest of the world would say: but what says Mr. Hastings? "A bad system was made to my hands; I had nothing to do in making it. I was altogether an involuntary instrument, and obliged to execute every evil which that system contained." This is the line of conduct your Lordships are called to decide upon. And I must here again remind you that we are at an issue of law. Mr. Hastings has avowed a certain set of principles upon which he acts; and your Lordships are therefore to judge whether his acts are justifiable because he found an evil system to act upon, or whether he and all governors upon earth have not a general good system upon which they ought to act.

The prisoner tells you, my Lords, that it was in consequence of this evil system, that the Nabob, from being a powerful prince, became reduced to a wretched dependant on the Company, and subject to all the

evils of that degraded state, — subject to extortion, to indignity, to oppression. All these your Lordships are called upon to sanction; and because they may be connected with an existing system, you are to declare them to be an allowable part of a code for the government of British India.

In the year 1775, that powerful, magnificent, and illustrious prince, Sujah Dowlah, died in possession of the country of Oude. He had long governed a happy and contented people, and, if we except the portion of tyranny which we admit he really did exercise towards some few individuals who resisted his power, he was a wise and beneficent governor. This prince died in the midst of his power and fortune, leaving somewhere about fourscore children. Your Lordships know that the princes of the East have a great number of wives; and we know that these women, though reputed of a secondary rank, are yet of a very high degree, and honorably maintained according to the customs of the East. Sujah Dowlah had but one lawful wife: he had by her but one lawful child, Asoph ul Dowlah. He had about twenty-one male children, the eldest of whom was a person whom you have heard of very often in these proceedings, called Saadut Ali. Asoph ul Dowlah, being the sole legitimate son, had all the pretensions to succeed his father, as Subahdar of Oude, which could belong to any person under the Mogul government.

Your Lordships will distinguish between a Zemindar, who is a perpetual landholder, the hereditary proprietor of an estate, and a Subahdar, who derives from his master's will and pleasure all his employments, and who, instead of having the jaghiredars subject to his supposed arbitrary will, is himself a subject,

and must have his sovereign's patent for his place. Therefore, strictly and properly speaking, there is no succession in the office of Subahdar. At this time the Company, who alone could obtain the *sunnuds* [*sunnud?*], or patent, from the Great Mogul, upon account of the power they possessed in India, thought, and thought rightly, that with an officer who had no hereditary power there could be no hereditary engagements, — and that in their treaty with Asoph ul Dowlah, for whom they had procured the sunnud from the Great Mogul, they were at liberty to propose their own terms, which, if honorable and mutually advantageous to the new Subahdar and to the Company, they had a right to insist upon. A treaty was therefore concluded between the Company and Asoph ul Dowlah, in which the latter stipulated to pay a fixed subsidy for the maintenance of a certain number of troops, by which the Company's finances were greatly relieved and their military strength greatly increased.

This treaty did not contain one word which could justify any interference in the Nabob's government. That evil system, as Mr. Hastings calls it, is not even mentioned or alluded to; nor is there, I again say, one word which authorized Warren Hastings, or any other person whatever, to interfere in the interior affairs of his country. He was legally constituted Viceroy of Oude; his dignity of Vizier of the Empire, with all the power which that office gave him, derived from and held under the Mogul government, he legally possessed; and this evil system, which Mr. Hastings says led him to commit the enormities of which you shall hear by-and-by, was neither more nor less than what I have now stated.

But, my Lords, the prisoner thinks, that, when,

under any pretence, any sort of means could be furnished of interfering in the government of the country, he has a right to avail himself of them, to use them at his pleasure, and to govern by his own arbitrary will. The Vizier, he says, by this treaty was reduced to a state of vassalage; and he makes this curious distinction in proof of it. It was, he says, an optional vassalage: for, if he chose to get rid of our troops, he might do so and be free; if he had not a mind to do that, and found a benefit in it, then he was a vassal. But there is nothing less true. Here is a person who keeps a subsidiary body of your troops, which he is to pay for you; and in consequence of this Mr. Hastings maintains that he becomes a vassal. I shall not dispute whether vassalage is optional or by force, or in what way Mr. Hastings considered this prince as a vassal of the Company. Let it be as he pleased. I only think it necessary that your Lordships should truly know the actual state of that country, and the ground upon which Mr. Hastings stood. Your Lordships will find it a fairy land, in which there is a perpetual masquerade, where no one thing appears as it really is, — where the person who seems to have the authority is a slave, while the person who seems to be the slave has the authority. In that ambiguous government everything favors fraud, everything favors peculation, everything favors violence, everything favors concealment. You will therefore permit me to show to you what were the principles upon which Mr. Hastings appears, according to the evidence before you, to have acted, — what the state of the country was, according to his conceptions of it; and then you will see how he applied those principles to that state.

"The means by which our government acquired this influence," says Mr. Hastings, "and its right to exercise it, will require a previous explanation." He then proceeds, — "With his death [Sujah Dowlah's] a new political system commenced, and Mr. Bristow was constituted the instrument of its formation, and the trustee for the management of it. The Nabob Asoph ul Dowlah was deprived of a large part of his inheritance, — I mean the province of Benares, attached by a very feeble and precarious tenure to our dominions; the army fixed to a permanent station in a remote line of his frontier, with an augmented and perpetual subsidy; a new army, amphibiously composed of troops in his service and pay, commanded by English officers of our own nomination, for the defence of his new conquests; and his own natural troops annihilated, or alienated by the insufficiency of his revenue for all his disbursements, and the prior claims of those which our authority or influence commanded: in a word, he became a vassal of the government; but he still possessed an ostensible sovereignty. His titular rank of Vizier of the Empire rendered him a conspicuous object of view to all the states and chiefs of India; and on the moderation and justice with which the British government in Bengal exercised its influence over him many points most essential to its political strength and to the honor of the British name depended."

Your Lordships see that the system which is supposed to have reduced him to vassalage did not make, as he contends, a violent exercise of our power necessary or proper; but possessing, as the Nabob did, that high nominal dignity, and being in that state of vassalage, as Mr. Hastings thought proper to term it,

though there is no vassalage mentioned in the treaty, — being, I say, in that situation of honor, credit, and character, sovereign of a country as large as England, yielding an immense revenue, and flourishing in trade, certainly our honor depended upon the use we made of that influence which our power gave us over him; and we therefore press it upon your Lordships, that the conduct of Mr. Hastings was such as dishonored this nation.

He proceeds, — "This is not a place, nor have I room in it, to prove, what I shall here content myself with affirming, that, by a sacred and undeviating observance of every principle of public faith, the British dominion might have by this time acquired the means of its extension, through a virtual submission to its authority, to every region of Hindostan and Deccan. I am not sure that I should advise such a design, were it practicable, which at this time it certainly is not; and I very much fear that the limited formation of such equal alliances as might be useful to our present condition, and conduce to its improvement, is become liable to almost insurmountable difficulties: every power in India must wish for the support of ours, but they all dread the connection. The subjection of Bengal, and the deprivation of the family of Jaffier Ali Khân, though an effect of inevitable necessity, the present usurpations of the rights of the Nabob Wallau Jau in the Carnatic, and the licentious violations of the treaty existing between the Company and the Nabob Nizam ul Dowlah, though checked by the remedial interposition of this government, stand as terrible precedents against us; the effects of our connection with the Nabob Asoph ul Dowlah had a rapid tendency to the same conse-

quences, and it has been my invariable study to prevent it."

Your Lordships will remember that the counsel at the bar have said that they undertook the defence of Warren Hastings, not in order to defend him, but to rescue the British character from the imputations which have been laid upon it by the Commons of Great Britain. They have said that the Commons of Great Britain have slandered their country, and have misrepresented its character; while, on the contrary, the servants of the Company have sustained and maintained the dignity of the English character, have kept its public faith inviolate, preserved the people from oppression, reconciled every government to it in India, and have made every person under it prosperous and happy.

My Lords, you see what this man says himself, when endeavoring to prove his own innocence. Instead of proving it by the facts alleged by his counsel, he declares that by preserving good faith you might have conquered India, the most glorious conquest that was ever made in the world; that all the people want our assistance, but dread our connection. Why? Because our whole conduct has been one perpetual tissue of perfidy and breach of faith with every person who has been in alliance with us, in any mode whatever. Here is the man himself who says it. 'Can we bear that this man should now stand up in this place as the assertor of the honor of the British nation against us, who charge this dishonor to have fallen upon us by him, through him, and during his government?

But all the mischief, he goes on to assert, was in the previous system, in the formation of which

he had no share, — the system of 1775, when the first treaty with the Nabob was made. "That system," says he, "is not mine; it was made by General Clavering, Colonel Monson, and Mr. Francis." So it was, my Lords. It did them very great honor, and I believe it ever will do them honor, in the eyes of the British nation, that they took an opportunity, without the violation of faith, without the breach of any one treaty, and without injury to any person, to do great and eminent services to the Company. But Mr. Hastings disclaims it, unnecessarily disclaims it, for no one charges him with it. What we charge him with is the abuse of that system. To one of these abuses I will now call your Lordships' attention. Finding, soon after his appointment to the office of Governor-General, that the Nabob was likely to get into debt, he turns him into a vassal, and resolves to treat him as such. You will observe that this is not the only instance in which, upon a failure of payment, the defaulter becomes directly a vassal. You remember how Durbege Sing, the moment he fell into an arrear of tribute, became a vassal, and was thrown into prison, without any inquiry into the causes which occasioned that arrear. With respect to the Nabob of Oude, we assert, and can prove, that his revenue was 3,600,000*l.* at the day of his father's death; and if the revenue fell off afterwards, there was abundant reason to believe that he possessed in abundance the means of paying the Company every farthing.

Before I quit this subject, your Lordships will again permit me to reprobate the malicious insinuations by which Mr. Hastings has thought proper to

slander the virtuous persons who are the authors of that system which he complains of. They are men whose characters this country will ever respect, honor, and revere, both the living and the dead, — the dead for the living, and the living for the dead. They will altogether be revered for a conduct honorable and glorious to Great Britain, whilst their names stand as they now do, unspotted by the least imputation of oppression, breach of faith, perjury, bribery, or any other fraud whatever. I know there was a faction formed against them upon that very account. Be corrupt, you have friends; stem the torrent of corruption, you open a thousand venal mouths against you. Men resolved to do their duty must be content to suffer such opprobrium, and I am content; in the name of the living and of the dead, and in the name of the Commons, I glory in our having appointed some good servants at least to India.

But to proceed. "This system was not," says he, "of my making." You would, then, naturally imagine that the persons who made this abominable system had also made some tyrannous use of it. Let us see what use they made of it during the time of their majority in the Council. There was an arrear of subsidy due from the Nabob. How it came into arrear we shall consider hereafter. The Nabob proposed to pay it by taxing the jaghires of his family, and taking some money from the Begum. This was consented to by Mr. Bristow, at that time Resident for the Company in Oude; and to this arrangement Asoph ul Dowlah and his advisers lent a willing ear. What did Mr. Hastings then say of this transaction? He called it a violent

assumption of power on the part of the Council. He did not, you see, then allow that a bad system justified any persons whatever in an abuse of it. He contended that it was a violent attack upon the rights and property of the parties from whom the money was to be taken, that it had no ground or foundation in justice whatever, and that it was contrary to every principle of right and equity.

Your Lordships will please to bear in mind, that afterwards, by his own consent, and the consent of the rest of the Council, this business was compromised between the son, the mother, and their relations. A very great sum of money, which was most useful to the Company at that period, was raised by a family compact and arrangement among themselves. This proceeding was sanctioned by the Company, Mr. Hastings himself consenting; and a pledge was given to the Begums and family of the Nabob, that this should be the last demand made upon them, — that it should be considered, not as taken compulsively, but as a friendly and amicable donation. They never admitted, nor did the Nabob ever contend, that he had any right at all to take this money from them. At that time it was not Mr. Hastings's opinion that the badness of the system would justify any violence as a consequence of it; and when the advancement of the money was agreed to between the parties, as a family and amicable compact, he was as ready as anybody to propose and sanction a regular treaty between the parties, that all claims on one side and all kind of uneasiness on the other should cease forever, under the guardianship of British faith.

Mr. Hastings, as your Lordships remember, has

conceded that British faith is the support of the British empire; that, if that empire is to be maintained, it is to be maintained by good faith; that, if it is to be propagated, it is to be propagated by public faith; and that, if the British empire falls, it will be through perfidy and violence. These are the principles which he assumes, when he chooses to reproach others. But when he has to defend his own perfidy and breaches of faith, then, as your Lordships will find set forth in his defence before the House of Commons on the Benares charge, he denies, or at least questions, the validity of any treaty that can at present be made with India. He declares that he considers all treaties as being weakened by a considerable degree of doubt respecting their validity and their binding force, in such a state of things as exists in India.

Whatever was done, during that period of time to which I have alluded, by the majority of the Council, Mr. Hastings considered himself as having nothing to do with, on the plea of his being a dissentient member: a principle which, like other principles, I shall take some notice of by-and-by. Colonel Monson and General Clavering died soon after, and Mr. Hastings obtained a majority in the Council, and was then, as he calls it, restored to his authority; so that any evil that could be done by evil men under that evil system could have lasted but for a very short time indeed. From that moment, Mr. Hastings, in my opinion, became responsible for every act done in Council, while he was there, which he did not resist, and for every engagement which he did not oppose. For your Lordships will not bear that miserable jargon which you have heard, shameful to office and to

official authority, that a man, when he happens not to find himself in a majority upon any measure, may think himself excusable for the total neglect of his duty; that in such a situation he is not bound to propose anything that it might be proper to propose, or to resist anything that it might be proper to resist. What would be the inference from such an assumption? That he can never act in a commission; that, unless a man has the supreme power, he is not responsible for anything he does or neglects to do. This is another principle which your Lordships will see constantly asserted and constantly referred to by Mr. Hastings. Now I do contend, that, notwithstanding his having been in a minority, if there was anything to be done that could prevent oppressive consequences, he was bound to do that thing; and that he was bound to propose every possible remedial measure. This proud, rebellious proposition against the law, that any one individual in the Council may say that he is responsible for nothing, because he is not the whole Council, calls for your Lordships' strongest reprobation.

I must now beg leave to observe to you, that the treaty was made (and I wish your Lordships to advert to dates) in the year 1775; Mr. Hastings acquired the majority in something more than a year afterwards; and therefore, supposing the acts of the former majority to have been ever so iniquitous, their power lasted but a short time. From the year 1776 to 1784 Mr. Hastings had the whole government of Oude in himself, by having the majority in the Council. My Lords, it is no offence that a Governor-General, or anybody else, has the majority in the Council. To have the government in himself is no of-

fence. Neither was it any offence, if you please, that the Nabob was virtually a vassal to the Company, as he contends he was. For the question is not, what a Governor-General *may* do, but what Warren Hastings did do. He who has a majority in Council, and records his own acts there, may justify these acts as legal: I mean the mode is legal. But as he executes whatever he proposes as Governor-General, he is solely responsible for the *nature* of the acts themselves.

I shall now show your Lordships that Mr. Hastings, finding, as he states, the Nabob to be made by the treaty in 1775 eventually a vassal to the Company, has thought proper to make him a vassal to himself, for his own private purposes. Your Lordships will see what corrupt and iniquitous purposes they were. In the first place, in order to annihilate in effect the Council, and to take wholly from them their control in the affairs of Oude, he suppressed (your Lordships will find the fact proved in your minutes) the Persian correspondence, which was the whole correspondence of Oude. This whole correspondence was secreted by him, and kept from the Council. It was never communicated to the Persian translator of the Company, Mr. Colebrooke, who had a salary for executing that office. It was secreted, and kept in the private cabinet of Mr. Hastings; from the period of 1781 to 1785 no part of it was communicated to the Council. There is nothing, as your Lordships have often found in this trial, that speaks for the man like himself; there is nothing will speak for his conduct like the records of the Company.

"*Fort William*, 19*th February*, 1785.

"At a Council: present, the Honorable John Macpherson, Esquire, Governor-General, President, and John Stables, Esquire.

"The Persian Translator, attending in obedience to the Board's orders, reports, that, since the end of the year 1781, there have been no books of correspondence kept in his office, because, from that time until the late Governor-General's departure, he was employed but once by the Governor-General to manage the correspondence, during a short visit which Major Davy, the military Persian interpreter, paid by the Governor's order to Lucknow; that, during that whole period of three years, he remained entirely ignorant of the correspondence, as he was applied to on no occasion, except for a few papers sometimes sent to him by the secretaries, which he always returned to them as soon as translated.

"The Persian Translator has received from Mr. Scott, since the late Governor-General's departure, a trunk containing English draughts and translations and the Persian originals of letters and papers, with three books in the Persian language containing copies of letters written between August, 1782, and January, 1785; and if the Board should please to order the secretaries of the general department to furnish him with copies of all translations and draughts recorded in their Consultations between the 1st of January, 1782, and the 31st of January, 1785, he thinks that he should be able, with what he has found in Captain Scott's trunk, to make up the correspondence for that period.

(Signed) "EDWARD COLEBROOKE,
"*Persian Translator.*"

Hear, then, my Lords, what becomes of the records of the Company, which were to be the vouchers for every public act, — which were to show whether, in the Company's transactions, agreements, and treaties with the native powers, the public faith was kept or not. You see them all crammed into Mr. Scott's trunk: a trunk into which they put what they please, take out what they please, suppress what they please, or thrust in whatever will answer their purpose. The records of the Governor-General and Council of Bengal are kept in Captain Jonathan Scott's trunk; this trunk is to be considered as the real and true channel of intelligence between the Company and the country powers. But even this channel was not open to any member of the Council, except Mr. Hastings; and when the Council, for the first time, daring to think for themselves, call upon the Persian Translator, he knows nothing about it. We find that it is given into the hands of a person nominated by Mr. Hastings, — Major Davy. What do the Company know of him? Why, he was Mr. Hastings's private secretary. In this manner the Council have been annihilated during all these transactions, and have no other knowledge of them than just what Mr. Hastings and his trunk-keeper thought proper to give them. All, then, that we know of these transactions is from the miserable, imperfect, garbled correspondence.

But even if these papers contained a full and faithful account of the correspondence, what we charge is its not being delivered to the Council as it occurred from time to time. Mr. Hastings kept the whole government of Oude in his own hands; so that the Council had no power of judging his acts, of checking, controlling, advising, or remonstrating. It was

totally annihilated by him; and we charge, as an act of treason and rebellion against the act of Parliament by which he held his office, his depriving the Council of their legitimate authority, by shutting them out from the knowledge of all affairs, — except, indeed, when he thought it expedient, for his own justification, to have their nominal concurrence or subsequent acquiescence in any of his more violent measures.

Your Lordships see Mr. Hastings's system, a system of concealment, a system of turning the vassals of the Company into his own vassals, to make them contributory, not to the Company, but to himself. He has avowed this system in Benares; he has avowed it in Oude. It was his constant practice. Your Lordships see in Oude he kept a correspondence with Mr. Markham for years, and did alone all the material acts which ought to have been done in Council. He delegated a power to Mr. Markham which he had not to delegate; and you will see he has done the same in every part of India.

We first charge him not only with acting without authority, but with a strong presumption, founded on his concealment, of intending to act mischievously. We next charge his concealing and withdrawing correspondence, as being directly contrary to the orders of the Court of Directors, the practice of his office, and the very nature and existence of the Council in which he was appointed to preside. We charge this as a substantive crime, and as the forerunner of the oppression, desolation, and ruin of that miserable country.

Mr. Hastings having thus rendered the Council blind and ignorant, and consequently fit for subserviency, what does he next do? I am speaking, not with

regard to the time of his particular acts, but with regard to the general spirit of the proceedings. He next flies in the face of the Company upon the same principle on which he removed Mr. Fowke from Benares. "I removed *him* on political grounds," says he, "against the orders of the Court of Directors, because I thought it necessary that the Resident should be a man of my own nomination and confidence." At Oude he proceeds on the same principle. Mr. Bristow had been nominated to the office of Resident by the Court of Directors. Mr. Hastings, by an act of Parliament, was ordered to obey the Court of Directors. He positively refuses to receive Mr. Bristow, for no other reason that we know of but because he was nominated by the Court of Directors; he defies the Court, and declares in effect that they shall not govern that province, but that he will govern it by a Resident of his own.

Your Lordships will mark his progress in the establishment of that new system, which, he says, he had been obliged to adopt by the evil system of his predecessors. First, he annihilates the Council, formed by an act of Parliament, and by order of the Court of Directors. In the second place, he defies the order of the Court, who had the undoubted nomination of all their own servants, and who ordered him, under the severest injunction, to appoint Mr. Bristow to the office of Resident in Oude. He for some time refused to nominate Mr. Bristow to that office; and even when he was forced, against his will, to permit him for a while to be there, he sent Mr. Middleton and Mr. Johnson, who annihilated Mr. Bristow's authority so completely that no one public act passed through his hands.

After he had ended this conflict with the Directors, and had entirely shook off their authority, he resolved that the native powers should know that they were not to look to the Court of Directors, but to look to his arbitrary will in all things; and therefore, to the astonishment of the world, and as if it were designedly to expose the nakedness of the Parliament of Great Britain, to expose the nakedness of the laws of Great Britain, and the nakedness of the authority of the Court of Directors to the country powers, he wrote a letter, which your Lordships will find in page 795 of the printed Minutes. In this letter the secret of his government is discovered to the country powers. They are given to understand, that, whatever exaction, whatever oppression or ruin they may suffer, they are to look nowhere for relief but to him: not to the Council, not to the Court of Directors, not to the sovereign authority of Great Britain, but to him, and him only.

Before we proceed to this letter, we will first read to you the Minute of Council by which he dismissed Mr. Bristow upon a former occasion, (it is in page 507 of the printed Minutes,) that your Lordships may see his audacious defiance of the laws of the country. We wish, I say, before we show you the horrible and fatal effects of this his defiance, to impress continually upon your Lordships' minds that this man is to be tried by the laws of the country, and that it is not in his power to annihilate their authority and the authority of his masters. We insist upon it, that every man under the authority of this country is bound to obey its laws. This minute relates to his first removal of Mr. Bristow: I read it in order to show that he dared to defy the Court of Directors so early as the year 1776.

"Resolved, That Mr. John Bristow be recalled to the Presidency from the court of the Nabob of Oude, and that Mr. Nathaniel Middleton be restored to the appointment of Resident at that court, subject to the orders and authority of the Governor-General and Council, conformably to the motion of the Governor-General."

I will next read to your Lordships the orders of the Directors for his reinstatement, on the 4th of July, 1777.

"Upon the most careful perusal of your proceedings upon the 2d of December, 1776, relative to the recall of Mr. Bristow from the court of the Nabob of Oude, and the appointment of Mr. Nathaniel Middleton to that station, we must declare our strongest disapprobation of the whole of that transaction. We observe that the Governor-General's motion for the recall of Mr. Bristow includes that for the restoration of Mr. Nathaniel Middleton; but as neither of those measures appear to us necessary, or even justifiable, they cannot receive our approbation. With respect to Mr. Bristow, we find no shadow of charge against him. It appears that he has executed his trust to the entire satisfaction even of those members of the Council who did not concur in his appointment. You have unanimously recommended him to our notice; attention to your recommendation has induced us to afford him marks of our favor, and to reannex the emoluments affixed by you to his appointment, which had been discontinued by our order; and as we must be of opinion that a person of acknowledged abilities, whose conduct has thus gained him the esteem of his superiors, ought not to be degraded without just cause, we do not hesitate to interpose in his behalf,

and therefore direct that Mr. Bristow do forthwith return to his station of Resident at Oude, from which he has been so improperly removed."

Upon the receipt of these orders by the Council, Mr. Francis, then a member of the Council, moves, "That, in obedience to the Company's orders, Mr. Bristow be forthwith appointed and directed to return to his station of Resident at Oude, and that Mr. Purling be ordered to deliver over charge of the office to Mr. Bristow immediately on his arrival, and return himself forthwith to the Presidency; also that the Governor-General be requested to furnish Mr. Bristow with the usual letter of credence to the Nabob Vizier."

Upon this motion being made, Mr. Hastings entered the following minute.

"I will ask, who is Mr. Bristow, that a member of the administration should at such a time hold him forth as an instrument for the degradation of the first executive member of this government? What are the professed objects of his appointment? What are the merits and services, or what the qualifications, which entitle him to such an uncommon distinction? Is it for his superior integrity, or from his eminent abilities, that he is to be dignified, at such hazards of every consideration that ought to influence members of this administration? Of the former I know no proofs; I am sure that it is not an evidence of it, that he has been enabled to make himself the principal in such a competition; and for the test of his abilities, I appeal to the letter which he has dared to write to this board, and which, I am ashamed to say, we have suffered. I desire that a copy of it may be inserted in this day's proceedings, that it may stand before the eyes of every

member of the board, when he shall give his vote upon a question for giving their confidence to a man, their servant, who has publicly insulted them, his masters, and the members of the government, to whom he owes his obedience; who, assuming an association with the Court of Directors, and erecting himself into a tribunal, has arraigned them for disobedience of orders, passed judgment upon them, and condemned or acquitted them as their magistrate and superior. Let the board consider whether a man possessed of so independent a spirit, who has already shown such a contempt of their authority, who has shown himself so wretched an advocate for his own cause and negotiator for his own interest, is fit to be trusted with the guardianship of their honor, the execution of their measures, and as their confidential manager and negotiator with the princes of India."

My Lords, you here see an instance of what I have before stated to your Lordships, and what I shall take the liberty of recommending to your constant consideration. You see that a tyrant and a rebel is one and the same thing. You see this man, at the very time that he is a direct rebel to the Company, arbitrarily and tyrannically displacing Mr. Bristow, although he had previously joined in the approbation of his conduct, and in voting him a pecuniary reward. He is ordered by the Court of Directors to restore that person, who desires, in a suppliant, decent, proper tone, that the Company's orders should produce their effect, and that the Council would have the goodness to restore him to his situation.

My Lords, you have seen the audacious insolence, the tyrannical pride, with which he dares to treat this order. You have seen the recorded minute which

he has dared to send to the Court of Directors; and in this you see, that, when he cannot directly asperse a man's conduct, and has nothing to say against it, he maliciously, I should perhaps rather say enviously, insinuates that he had unjustly made his fortune. "You are," says he, "to judge from the independence of his manner and style, whether he could or no have got that without some unjust means." God forbid I should ever be able to invent anything that can equal the impudence of what this man dares to write to his superiors, or the insolent style in which he dares to treat persons who are not his servants!

Who made the servants of the Company the master of the servants of the Company? The Court of Directors are their fellow-servants; they are all the servants of this kingdom. Still the claim of a fellow-servant to hold an office which the Court of Directors had legally appointed him to is considered by this audacious tyrant as an insult to him. By this you may judge how he treats not only the servants of the Company, but the natives of the country, and by what means he has brought them into that abject state of servitude in which they are ready to do anything he wishes and to sign anything he dictates. I must again beg your Lordships to remark what this man has had the folly and impudence to place upon the records of the Council of which he was President; and I will venture to assert that so extraordinary a performance never before appeared on the records of any court, Eastern or European. Because Mr. Bristow claims an office which is his right and his freehold as long as the Company chooses, Mr. Hastings accuses him of being an accomplice with the Court of Directors in a conspiracy against him; and

because, after long delays, he had presented an humble petition to have the Court of Directors' orders in his favor carried into execution, he says "he has erected himself into a tribunal of justice; that he has arraigned the Council for disobedience of orders, passed judgment upon them, and condemned or acquitted them as their magistrate and superior."

Let us suppose his Majesty to have been pleased to appoint any one to an office in the gift of the crown, what should we think of the person whose business it was to execute the King's commands, if he should say to the person appointed, when he claimed his office, "You shall not have it, you assume to be my superior, and you disgrace and dishonor me"? Good God! my Lords, where was this language learned? in what country, and in what barbarous nation of Hottentots was this jargon picked up? For there is no Eastern court that I ever heard of (and I believe I have been as conversant with the manners and customs of the East as most persons whose business has not directly led them into that country) where such conduct would have been tolerated. A bashaw, if he should be ordered by the Grand Seignior to invest another with his office, puts the letter upon his head, and obedience immediately follows.

But the obedience of a barbarous magistrate should not be compared to the obedience which a British subject owes to the laws of his country. Mr. Hastings receives an order which he should have instantly obeyed. He is reminded of this by the person who suffers from his disobedience; and this proves that person to be possessed of too independent a spirit. Ay, my Lords, here is the grievance; — no man can dare show in India an independent spirit. It is this,

and not his having shown such a contempt of their authority, not his having shown himself so wretched an advocate for his own cause and so bad a negotiator for his own interest, that makes him unfit to be trusted with the guardianship of their honor, the execution of their measures, and to be their confidential manager and negotiator with the princes of India.

But, my Lords, what is this want of skill which Mr. Bristow has shown in negotiating his own affairs? Mr. Hastings will inform us. "He should have pocketed the letter of the Court of Directors; he should never have made the least mention of it. He should have come to my banian, Cantoo Baboo; he should have offered him a bribe upon the occasion. That would have been the way to succeed with me, who am a public-spirited taker of bribes and nuzzers. But this base fool, this man, who is but a vile negotiator for his own interest, has dared to accept the patronage of the Court of Directors. He should have secured the protection of Cantoo Baboo, their more efficient rival. This would have been the skilful mode of doing the business." But this man, it seems, had not only shown himself an unskilful negotiator, he had likewise afforded evidence of his want of integrity. And what is this evidence? His having "enabled himself to become the *principal* in such a competition." That is to say, he had, by his meritorious conduct in the service of his masters, the Directors, obtained their approbation and favor. Mr. Hastings then contemptuously adds, "And for the test of his abilities, I appeal to the letter which he has dared to write to the board, and which I am ashamed to say we have suffered." Whatever that letter may be, I will venture to say there is not a word or syllable in

it that tastes of such insolence and arbitrariness with regard to the servants of the Company, his fellow-servants, of such audacious rebellion with regard to the laws of his country, as are contained in this minute of Mr. Hastings.

But, my Lords, why did he choose to have Mr. Middleton appointed Resident? Your Lordships have not seen Mr. Bristow: you have only heard of him as a humble suppliant to have the orders of the Company obeyed. But you have seen Mr. Middleton. You know that Mr. Middleton is a good man to keep a secret: I describe him no further. You know what qualifications Mr. Hastings requires in a favorite. You also know why he was turned out of his employment, with the approbation of the Court of Directors: that it was principally because, when Resident in Oude, he positively, audaciously, and rebelliously refused to lay before the Council the correspondence with the country powers. He says he gave it up to Mr. Hastings. Whether he has or has not destroyed it we know not; all we know of it is, that it is not found to this hour. We cannot even find Mr. Middleton's trunk, though Mr. Jonathan Scott did at last produce his. The whole of the Persian correspondence, during Mr. Middleton's Residence, was refused, as I have said, to the board at Calcutta and to the Court of Directors, — was refused to the legal authorities; and Mr. Middleton, for that very refusal, was again appointed by Mr. Hastings to supersede Mr. Bristow, removed without a pretence of offence; he received, I say, this appointment from Mr. Hastings, as a reward for that servile compliance by which he dissolved every tie between himself and his legal masters.

The matter being now brought to a simple issue, whether the Governor-General is or is not bound to obey his superiors, I shall here leave it with your Lordships; and I have only to beg your Lordships will remark the course of events as they follow each other, — keeping in mind that the prisoner at your bar declared Mr. Bristow to be a man of suspected integrity, on account of his independence, and deficient in ability, because he did not know how best to promote his own interest.

I must here state to your Lordships, that it was the duty of the Resident to transact the money concerns of the Company, as well as its political negotiations. You will now see how Mr. Hastings divided that duty, after he became apprehensive that the Court of Directors might be inclined to assert their own authority, and to assert it in a proper manner, which they so rarely did. When, therefore, his passion had cooled, when his resentment of those violent indignities which had been offered to him, namely, the indignity of being put in mind that he had any superior under heaven, (for I know of no other,) he adopts the expedient of dividing the Residency into two offices; he makes a fair compromise between himself and the Directors; he appoints Mr. Middleton to the management of the money concerns, and Mr. Bristow to that of the political affairs. Your Lordships see that Mr. Bristow, upon whom he had fixed the disqualification for political affairs, was the very person appointed to that department; and to Mr. Middleton, the man of his confidence, he gives the management of the money transactions. He discovers plainly where his heart was: for where your treasure is, there will your heart be also. This

private agent, this stifler of correspondence, a man whose costive retention discovers no secret committed to him, and whose slippery memory is subject to a diarrhœa which permits everything he did know to escape, — this very man he places in a situation where his talents could only be useful for concealment, and where concealment could only be used to cover fraud; while Mr. Bristow, who was by his official engagement responsible to the Company for fair and clear accounts, was appointed superintendent of political affairs, an office for which Mr. Hastings declared he was totally unfit.

My Lords, you will judge of the designs which the prisoner had in contemplation, when he dared to commit this act of rebellion against the Company; you will see that it could not have been any other than getting the money transactions of Oude into his own hands. The presumption of a corrupt motive is here as strong as, I believe, it possibly can be.

The next point to which I have to direct your Lordships' attention is that part of the prisoner's conduct, in this matter, by which he exposed the nakedness of the Company's authority to the native powers. You would imagine, that, after the first dismissal of Mr. Bristow, Mr. Hastings would have done with him forever; that nothing could have induced him again to bring forward a man who had dared to insult him, a man who had shown an independent spirit, a man who had dishonored the Council and insulted his masters, a man of doubtful integrity and convicted unfitness for office. But, my Lords, in the face of all this, he afterwards sends this very man, with undivided authority, into the country as sole Resident. And now your Lordships shall hear

in what manner he accounts for this appointment to Gobind Ram, the *vakeel*, or ambassador, of the Nabob Asoph ul Dowlah at Calcutta. It is in page 795 of the printed Minutes.

Extract of an Arzee sent by Rajah Gobind Ram to the Vizier, by the Governor-General's directions, and written the 27th of August, 1782.

"This day the Governor-General sent for me in private. After recapitulating the various informations he had received respecting the anarchy and confusion said to reign throughout your Highness's country, and complains that neither your Highness, or Hyder Beg Khân, or Mr. Middleton, or Mr. Johnson, ever wrote to him on the state of your affairs, or, if he ever received a letter from your presence, it always contained assertions contrary to the above informations, the Governor-General proceeded as follows.

"That it was his intention to have appointed Mr. David Anderson to attend upon your Highness, but that he was still with Sindia, and there was no prospect of his speedy return from his camp; therefore it was now his wish to appoint Mr. John Bristow, who was well experienced in business, to Lucknow. That, when Mr. Bristow formerly held the office of Resident there, he was not appointed by him; and that, notwithstanding he had not shown any instances of disobedience, yet he had deemed it necessary to recall him, because he had been patronized and appointed by gentlemen who were in opposition to him, and had counteracted and thwarted all his measures; that this had been his reason for recalling Mr. Bristow. That, since Mr. Francis's return to Europe, and the arrival of information there of the deaths of

the other gentlemen, the King and the Company had declared their approbation of his, the Governor-General's, conduct, and had conferred upon him the most ample powers; that they had sent out Mr. Macpherson, who was his old and particular friend; and that Mr. Stables, that was on his way here as a member of the Supreme Council, was also his particular friend; that Mr. Wheler had received letters from Europe, informing him that the members of the Council were enjoined all of them to coöperate and act in conjunction with him, in every measure which should be agreeable to him; and that there was no one in Council now who was not united with him, and consequently that his authority was perfect and complete. That Mr. Bristow, as it was known to me, had returned to Europe; but that during his stay there he had never said anything disrespectful of him or endeavored to injure him; on the contrary, he had received accounts from Europe that Mr. Bristow had spoken much in his praise, so that Mr. Bristow's friends had become his friends; that Mr. Bristow had lately been introduced to him by Mr. Macpherson, had explained his past conduct perfectly to his satisfaction, and had requested from him the appointment to Lucknow, and had declared, in the event of his obtaining the appointment, that he should show every mark of attention and obedience to the pleasure of your Highness, and his, the Governor's, saying, that your Highness was well pleased with him, and that he knew what you had written formerly was at the instigation of Mr. Middleton. That, in consequence of the foregoing, he, the Governor, had determined to have appointed Mr. Bristow to Lucknow, but had postponed his dismission to his

office for the following reasons, *videlicet*, people at Lucknow might think that Mr. Bristow had obtained his appointment in consequence of orders from Europe, and contrary to the Governor's inclination; but as the contrary was the case, and as he now considered Mr. Bristow as the object of his own particular patronage, therefore he directed me to forward Mr. Bristow's arzee to the presence; and that it was the Governor's wish that your Highness, on the receipt thereof, would write a letter to him, and, as from yourself, request of him that Mr. Bristow may be appointed to Lucknow, and that you would write an answer to this arzee, expressive of your personal satisfaction on the subject. The Governor concluded with injunctions, that, until the arrival of your Highness's letter requesting the appointment of Mr. Bristow, and your answer to this arzee, that I should keep the particulars of this conversation a profound secret; for that the communication of it to any person whatever would not only cause his displeasure, but would throw affairs at Lucknow into great confusion.

"The preceding is the substance of the Governor's directions to me. He afterwards went to Mr. Macpherson's, and I attended him. Mr. Bristow was there; the Governor took Mr. Bristow's arzee from his hand and delivered it into mine, and thence proceeded to Council. Mr. Bristow's arzee, and the following particulars, I transmit and communicate by the Governor's directions; and I request that I may be favored with the answer to the arzee and the letter to the Governor as soon as possible, as his injunctions to me were very particular on the subject."

My Lords, I have to observe upon this very extraordinary transaction, that you will see many things in this letter that are curious, and worthy of being taken out of that abyss of secrets, Mr. Scott's trunk, in which this arzee was found. It contains, as far as the prisoner thinks proper to reveal it, the true secret of the transaction.

He confesses, first, the state of the Vizier's country, as communicated to him in various accounts of the anarchy and confusion said to reign throughout his territories. This was in the year 1782, during the time that the Oude correspondence was not communicated to the Council.

He next stated, that neither the Vizier, nor his minister, nor Mr. Middleton, nor Mr. Johnson, ever wrote to him on the state of affairs. Here, then, are three or four persons, all nominated by himself, every one of them supposed to be in his strictest confidence, — the Nabob and his vassal, Hyder Beg Khân, being, as we shall show afterwards, entirely his dependants, — and yet Mr. Hastings declares, that not one of them had done their duty, or had written him one word concerning the state of the country, and the anarchy and confusion that prevailed in it, and that, when the Nabob did write, his assertions were contrary to the real state of things. Now this irregular correspondence, which he carried on at Lucknow, and which gave him, as he pretends, this contradictory information, was, as your Lordships will see, nothing more or less than a complete fraud.

Your Lordships will next observe, that he tells the vakeel his reason for turning him out was, that he had been patronized by other gentlemen. This was true: but they had a right to patronize him; and

they did not patronize him from private motives, but in direct obedience to the order of the Court of Directors. He then adds the assurance which he had received from Mr. Bristow, that he would be perfectly obedient to him, Mr. Hastings, in future; and he goes on to tell the vakeel that he knew the Vizier was once well pleased with him, (Mr. Bristow,) and that his formal complaints against him were written at the instigation of Mr. Middleton.

Here is another discovery, my Lords. When he recalled Mr. Bristow, he did it under the pretence of its being desired by the Nabob of Oude; and that, consequently, he would not keep at the Nabob's court a man that was disagreeable to him. Yet, when the thing comes to be opened, it appears that Mr. Middleton had made the Nabob, unwillingly, write a false letter. This subornation of falsehood appears also to have been known to Mr. Hastings. Did he, either as the natural guardian and protector of the reputation of his fellow-servants, or as the official administrator of the laws of his country, or as a faithful servant of the Company, ever call Mr. Middleton to an account for it? No, never. To everybody, therefore, acquainted with the characters and circumstances of the parties concerned, the conclusion will appear evident that he was himself the author of it. But your Lordships will find there is no end of his insolence and duplicity.

He next tells the vakeel, that the reason why he postponed the mission of Mr. Bristow to Lucknow was lest the people of Lucknow should think he had obtained his appointment in consequence of orders from Europe, and contrary to the Governor's inclination. You see, my Lords, he would have the

people of the country believe that they are to receive the person appointed Resident not as appointed by the Company, but in consequence of his being under Mr. Hastings's particular patronage; and to remove from them any suspicion that the Resident would obey the orders of the Court of Directors, or any orders but his own, he proceeds in the manner I have read to your Lordships.

You here see the whole machinery of the business. He removes Mr. Bristow, contrary to the orders of the Court of Directors. Why? Because, says he to the Court of Directors, the Nabob complained of him, and desired it. He here says, that he knew the Nabob did not desire it, but that the letter of complaint really and substantially was Mr. Middleton's. Lastly, as he recalls Mr. Bristow, so he wishes him to be called back in the same fictitious and fraudulent manner. This system of fraud proves that there is not one letter from that country, not one act of this Vizier, not one act of his ministers, not one act of his ambassadors, but what is false and fraudulent. And now think, my Lords, first, of the slavery of the Company's servants, subjected in this manner to the arbitrary will and corrupt frauds of Mr. Hastings! Next think of the situation of the princes of the country, obliged to complain without matter of complaint, to approve without [ground?] of satisfaction, and to have all their correspondence fabricated by Mr. Hastings at Calcutta!

But, my Lords, it was not indignities of this kind alone that the native princes suffered from this system of fraud and duplicity. Their more essential interests, and those of the people, were involved in it; it pervaded and poisoned the whole mass of their internal government.

Who was the instrument employed in all this double-dealing? Gobind Ram, the Vizier's diplomatic minister at Calcutta. Suspicions perpetually arise in his mind whether he is not cheated and imposed upon. He could never tell when he had Mr. Hastings fixed upon any point. He now finds him recommending Mr. Middleton, and then declaring that Mr. Middleton neglects the duty of his office, and gives him, Gobind Ram, information that is fraudulent and directly contrary to the truth. He is let into various contradictory secrets, and becomes acquainted with innumerable frauds, falsehoods, and prevarications. He knew that the whole pretended government of Oude was from beginning to end a deception; that it was an imposture for the purpose of corruption and peculation. Such was the situation of the Nabob's vakeel. The Nabob himself was really at a loss to know who had and who had not the Governor's confidence; whether he was acting in obedience to the orders of the Court of Directors, or whether their orders were not always to be disobeyed. He thus writes to Gobind Ram, who was exactly in the same uncertainty.

"As to the commands of Mr. Hastings which you write on the subject of the distraction of the country and the want of information from me, and his wishes, that, as Mr. John Bristow has shown sincere wishes and attachment to Mr. Hastings, I should write for him to send Mr. John Bristow, it would have been proper and necessary for you privately to have understood what were Mr. Hastings's real intentions, whether the choice of sending Mr. John Bristow was his own desire, or whether it was in compliance with Mr. Macpherson's, that I might then have written

conformably thereto. Writings are now sent to you for both cases; having privately understood the wishes of Mr. Hastings, deliver whichever of the writings he should order you; for I study Mr. Hastings's satisfaction; whoever is his friend is mine, and whoever is his enemy is mine. But in both these cases, my wishes are the same; that having consented to the paper of questions which Major Davy carried with him, and having given me the authority of the country, whomever he may afterwards appoint, I am satisfied. I am now brought to great distress by these gentlemen, who ruin me; in case of consent, I am contented with Majors Davy and Palmer. Hereafter, whatever may be Mr. Hastings's desire, it is best."

Here is a poor, miserable instrument, confessing himself to be such, ruined by Mr. Hastings's public agents, Mr. Middleton and Mr. Johnson; ruined by his private agents, Major Davy and Major Palmer; ruined equally by them all; and at last declaring in a tone of despair, "If you have a mind really to keep Major Davy and Major Palmer here, why, I must consent to it. Do what you please with me, I am your creature; for God's sake, let me have a little rest."

Your Lordships shall next hear what account Hyder Beg Khân, the Vizier's prime-minister, gives of the situation in which he and his master were placed.

Extract of a Letter from Hyder Beg Khân, received 21st April, 1785.

"I hope that such orders and commands as relate to the friendship between his Highness and the Company's governments and to your will may be sent

through Major Palmer, in your own private letters, or in your letters to the Major, who is appointed from you at the presence of his Highness, that, in obedience to your orders, he may properly explain your commands, and, whatever affair may be settled, he may first secretly inform you of it, and afterwards his Highness may, conformably thereto, write an answer, and I also may represent it. By this system, your pleasure will always be fully made known to his Highness; and his Highness and we will execute whatever may be your orders, without deviating a hair's-breadth: and let not the representations of interested persons be approved of, because his Highness makes no opposition to your will; and I, your servant, am ready in obedience and service, and I make no excuses."

Now, my Lords, was there ever such a discovery made of the arcana of any public theatre? You see here, behind the ostensible scenery, all the crooked working of the machinery developed and laid open to the world. You now see by what secret movement the master of the mechanism has conducted the great Indian opera, — an opera of fraud, deceptions, and harlequin tricks. You have it all laid open before you. The ostensible scene is drawn aside; it has vanished from your sight. All the strutting signors, and all the soft signoras are gone; and instead of a brilliant spectacle of descending chariots, gods, goddesses, sun, moon, and stars, you have nothing to gaze on but sticks, wire, ropes, and machinery. You find the appearance all false and fraudulent; and you see the whole trick at once. All this, my Lords, we owe to Major Scott's trunk, which, by admitting us

behind the scene, has enabled us to discover the real state of Mr. Hastings's government in India. And can your Lordships believe that all this mechanism of fraud, prevarication, and falsehood could have been intended for any purpose but to forward that robbery, corruption, and peculation by which Mr. Hastings has destroyed one of the finest countries upon earth? Is it necessary, after this, for me to tell you that you are not to believe one word of the correspondence stated by him to have been received from India? This discovery goes to the whole matter of the whole government of the country. You have seen what that government was, and by-and-by you shall see the effects of it.

Your Lordships have now seen this trunk of Mr. Scott's producing the effects of Aladdin's lamp, — of which your Lordships may read in books much more worthy of credit than Mr. Hastings's correspondence. I have given all the credit of this precious discovery to Mr. Scott's trunk; but, my Lords, I find that I have to ask pardon for a mistake in supposing the letter of Hyder Beg Khân to be a part of Mr. Hastings's correspondence. It comes from another quarter, not much less singular, and equally authentic and unimpeachable. But though it is not from the trunk, it smells of the trunk, it smells of the leather. I was as proud of my imaginary discovery as Sancho Panza was that one of his ancestors had discovered a taste of iron in some wine, and another a taste of leather in the same wine, and that afterwards there was found in the cask a little key tied to a thong of leather, which had given to the wine a taste of both. Now, whether this letter tasted of the leather of the trunk or of the iron of Mr. Macpherson, I confess I

was a little out in my suggestion and my taste. The letter in question was written by Hyder Beg Khân, after Mr. Hastings's departure, to Mr. Macpherson, when he succeeded to the government. That gentleman thus got possession of a key to the trunk; and it appears to have been his intentions to follow the steps of his predecessor, to act exactly in the same manner, and in the same manner to make the Nabob the instrument of his own ruin. This letter was written by the Nabob's minister to Sir John Macpherson, newly inaugurated into his government, and who might be supposed not to be acquainted with all the best of Mr. Hastings's secrets, nor to have had all the trunk correspondence put into his hands. However, here is a trunk extraordinary, and its contents are much in the manner of the other. The Nabob's minister acquaints him with the whole secret of the system. It is plain that the Nabob considered it as a system not to be altered: that there was to be nothing true, nothing aboveboard, nothing open in the government of his affairs. When you thus see that there can be little doubt of the true nature of the government, I am sure that hereafter, when we come to consider the effects of that government, it will clear up and bring home to the prisoner at your bar all we shall have to say upon this subject.

Mr. Hastings, having thrown off completely the authority of the Company, as you have seen, — having trampled upon those of their servants who had manifested any symptom of independence, or who considered the orders of the Directors as a rule of their conduct, — having brought every Englishman under his yoke, and made them supple and fit instruments for all his designs, — then gave it to be

understood that such alone were fit persons to be employed in important affairs of state. Consider, my Lords, the effect of this upon the whole service. Not one man that appears to pay any regard to the authority of the Directors is to expect that any regard will be paid to himself. So that this man not only rebels himself, in his own person, against the authority of the Company, but he makes all their servants join him in this very rebellion. Think, my Lords, of this state of things, — and I wish it never to pass from your minds that I have called him the captain-general of the whole host of actors in Indian iniquity, under whom that host was arrayed, disciplined, and paid. This language which I used was not, as fools have thought proper to call it, offensive and abusive; it is in a proper criminatory tone, justified by the facts that I have stated to you, and in every step we take it is justified more and more. I take it as a text upon which I mean to preach; I take it as a text which I wish to have in your Lordships' memory from the beginning to the end of this proceeding. He is not only guilty of iniquity himself, but is at the head of a system of iniquity and rebellion, and will not suffer with impunity any one honest man to exist in India, if he can help it. Every mark of obedience to the legal authority of the Company is by him condemned; and if there is any virtue remaining in India, as I think there is, it is not his fault that it still exists there.

We have shown you the servile obedience of the natives of the country; we have shown you the miserable situation to which a great prince, at least a person who was the other day a great prince, was reduced by Mr. Hastings's system. We shall next

show you that this prince, who, unfortunately for himself, became a dependant on the Company, and thereby subjected to the will of an arbitrary government, is made by him the instrument of his own degradation, the instrument of his (the Governor's) falsehoods, the instrument of his peculations; and that he had been subjected to all this degradation for the purposes of the most odious tyranny, violence, and corruption.

Mr. Hastings, having assumed the government to himself, soon made Oude a private domain. It had, to be sure, a public name, but it was to all practical intents and purposes his park, or his warren, — a place, as it were, for game, whence he drew out or killed, at an earlier or later season, as he thought fit, anything he liked, and brought it to his table according as it served his purpose. Before I proceed, it will not be improper for me to remind your Lordships of the legitimate ends to which all controlling and superintending power ought to be directed. Whether a man acquires this power by law or by usurpation, there are certain duties attached to his station. Let us now see what these duties are.

The first is, to take care of that vital principle of every state, its revenue. The next is, to preserve the magistracy and legal authorities in honor, respect, and force. And the third, to preserve the property, movable and immovable, of all the people committed to his charge.

In regard to his first duty, the protection of the revenue, your Lordships will find, that, from three millions and upwards which I stated to be the revenue of Oude, and which Mr. Hastings, I believe, or anybody for him, has never thought proper to deny,

it sunk under his management to about one million four hundred and forty thousand pounds: and even this, Mr. Middleton says, (as you may see in your minutes,) was not completely realized. Thus, my Lords, you see that one half of the whole revenue of the country was lost after it came into Mr. Hastings's management. Well, but it may perhaps be said this was owing to the Nabob's own imprudence. No such thing, my Lords; it could not be so; for the whole *real* administration and government of the country was in the hands of Mr. Hastings's agents, public or private.

To let you see how provident Mr. Hastings's management of it was, I shall produce to your Lordships one of the principal manœuvres that he adopted for the improvement of the revenue, and for the happiness and prosperity of the country, the latter of which will always go along, more or less, with the first.

The Nabob, whose acts your Lordships have now learned to appreciate as no other than the acts of Mr. Hastings, writes to the Council to have a body of British officers, for the purposes of improving the discipline of his troops, collecting his revenues, and repressing disorder and outrage among his subjects. This proposal was ostensibly fair and proper; and if I had been in the Council at that time, and the Nabob had really and *bonâ fide* made such a request, I should have said he had taken a very reasonable and judicious step, and that the Company ought to aid him in his design.

Among the officers sent to Oude, in consequence of this requisition, was the well-known Colonel Hannay: a man whose name will be bitterly and long

remembered in India. This person, we understand, had been recommended to Mr. Hastings by Sir Elijah Impey: and his appointment was the natural consequence of such patronage. I say the natural consequence, because Sir Elijah Impey appears on your minutes to have been Mr. Hastings's private agent and negotiator in Oude. In that light, and in that light only, I consider Colonel Hannay in this business. We cannot prove that he was not of Mr. Hastings's own nomination originally and primarily; but whether we take him in this way, or as recommended by Sir Elijah Impey, or anybody else, Mr. Hastings is equally responsible.

Colonel Hannay is sent up by Mr. Hastings, and has the command of a brigade, of two regiments I think, given to him. Thus far all is apparently fair and easily understood. But in this country we find everything in masquerade and disguise. We find this man, instead of being an officer, farmed the revenue of the country, as is proved by Colonel Lumsden and other gentlemen, who were his sub-farmers and his assistants. Here, my Lords, we have a man who appeared to have been sent up the country as a commander of troops, agreeably to the Nabob's request, and who, upon our inquiry, we discover to have been farmer-general of the country! We discover this with surprise; and I believe, till our inquiries began, it was unknown in Europe. We have, however, proved upon your Lordships' minutes, by an evidence produced by Mr. Hastings himself, that Colonel Hannay was actually farmer-general of the countries of Baraitch and Goruckpore. We have proved upon your minutes that Colonel Hannay was the only person possessed of power in the country;

that there was no magistrate in it, nor any administration of the law whatever. We have proved to your Lordships that in his character of farmer-general he availed himself of the influence derived from commanding a battalion of soldiers. In short, we have proved that the whole power, civil, military, municipal, and financial, resided in him; and we further refer your Lordships to Mr. Lumsden and Mr. Halhed for the authority which he possessed in that country. Your Lordships, I am sure, will supply with your diligence what is defective in my statement; I have therefore taken the liberty of indicating to you where you are to find the evidence to which I refer. You will there, my Lords, find this Colonel Hannay in a false character: he is ostensibly given to the Nabob as a commander of his troops, while in reality he is forced upon that prince as his farmer-general. He is invested with the whole command of the country, while the sovereign is unable to control him, or to prevent his extorting from the people whatever he pleases.

If we are asked what the terms of his farm were, we cannot discover that he farmed the country at any certain sum. We cannot discover that he was subjected to any terms, or confined by any limitations. Armed with arbitrary power, and exercising that power under a false title, his exactions from the poor natives were only limited by his own pleasure. Under these circumstances, we are now to ask what there was to prevent him from robbing and ruining the people, and what security against his robbing the exchequer of the person whose revenue he farmed.

You are told by the witnesses in the clearest man-

ner, (and, after what you have heard of the state of Oude, you cannot doubt the fact,) that nobody, not even the Nabob, dared to complain against him, — that he was considered as a man authorized and supported by the power of the British government; and it is proved in the evidence before you that he vexed and harassed the country to the utmost extent which we have stated in our article of charge, and which you would naturally expect from a man acting under such false names with such real powers. We have proved that from some of the principal zemindars in that country, who held farms let to them for twenty-seven thousand rupees a year, a rent of sixty thousand was demanded, and in some cases enforced, — and that upon the refusal of one of them to comply with this demand, he was driven out of the country.

Your Lordships will find in the evidence before you that the inhabitants of the country were not only harassed in their fortunes, but cruelly treated in their persons. You have it upon Mr. Halhed's evidence, and it is not attempted, that I know of, to be contradicted, that the people were confined in open cages, exposed to the scorching heat of the sun, for pretended or real arrears of rent: it is indifferent which, because I consider all confinement of the person to support an arbitrary exaction to be an abomination not to be tolerated. They have endeavored, indeed, to weaken this evidence by an attempt to prove that a man day and night in confinement in an open cage suffers no inconvenience. And here I must beg your Lordships to observe the extreme unwillingness that appears in these witnesses. Their testimony is drawn from them drop by drop, their answers to our

questions are never more than yes or no; but when they are examined by the counsel on the other side, it flows as freely as if drawn from a perennial spring: and such a spring we have in Indian corruption. We have, however, proved that in these cages the renters were confined till they could be lodged in the dungeons or mud forts. We have proved that some of them were obliged to sell their children, that others fled the country, and that these practices were carried to such an awful extent that Colonel Hannay was under the necessity of issuing orders against the unnatural sale and flight which his rapacity had occasioned.

The prisoner's counsel have attempted to prove that this had been a common practice in that country. And though possibly some person as wicked as Colonel Hannay might have been there before at some time or other, no man ever sold his children but under the pressure of some cruel exaction. Nature calls out against it. The love that God has implanted in the heart of parents towards their children is the first germ of that second conjunction which He has ordered to subsist between them and the rest of mankind. It is the first formation and first bond of society. It is stronger than all laws; for it is the law of Nature, which is the law of God. Never did a man sell his children who was able to maintain them. It is, therefore, not only a proof of his exactions, but a decisive proof that these exactions were intolerable.

Next to the love of parents for their children, the strongest instinct, both natural and moral, that exists in man, is the love of his country: an instinct, indeed, which extends even to the brute creation. All

creatures love their offspring; next to that they love their homes: they have a fondness for the place where they have been bred, for the habitations they have dwelt in, for the stalls in which they have been fed, the pastures they have browsed in, and the wilds in which they have roamed. We all know that the natal soil has a sweetness in it beyond the harmony of verse. This instinct, I say, that binds all creatures to their country, never becomes inert in us, nor ever suffers us to want a memory of it. Those, therefore, who seek to fly their country can only wish to fly from oppression: and what other proof can you want of this oppression, when, as a witness has told you, Colonel Hannay was obliged to put bars and guards to confine the inhabitants within the country?

We have seen, therefore, Nature violated in its strongest principles. We have seen unlimited and arbitrary exaction avowed, on no pretence of any law, rule, or any fixed mode by which these people were to be dealt with. All these facts have been proved before your Lordships by costive and unwilling witnesses. In consequence of these violent and cruel oppressions, a general rebellion breaks out in the country, as was naturally to be expected. The inhabitants rise as if by common consent; every farmer, every proprietor of land, every man who loved his family and his country, and had not fled for refuge, rose in rebellion, as they call it. My Lords, they did rebel; it was a just rebellion. Insurrection was there just and legal, inasmuch as Colonel Hannay, in defiance of the laws and rights of the people, exercised a clandestine, illegal authority, against which there can be no rebellion in its proper sense.

As a rebellion, however, and as a rebellion of the

most unprovoked kind, it was treated by Colonel Hannay; and to one instance of the means taken for suppressing it, as proved by evidence before your Lordships, I will just beg leave to call your attention. One hundred and fifty of the inhabitants had been shut up in one of the mud forts I have mentioned. The people of the country, in their rage, attacked the fort, and demanded the prisoners; they called for their brothers, their fathers, their husbands, who were confined there. It was attacked by the joint assault of men and women. The man who commanded in the fort immediately cut off the heads of eighteen of the principal prisoners, and tossed them over the battlements to the assailants. There happened to be a prisoner in the fort, a man loved and respected in his country, and who, whether justly or unjustly, was honored and much esteemed by all the people. "Give us our Rajah, Mustapha Khân!" (that was the name of the man confined,) cried out the assailants. We asked the witness at your bar what he was confined for. He did not know; but he said that Colonel Hannay had confined him, and added, that he was sentenced to death. We desired to see the *fetwah*, or decree, of the judge who sentenced him. No, — no such thing, nor any evidence of its having ever existed, could be produced. We desired to know whether he could give any account of the process, any account of the magistrate, any account of the accuser, any account of the defence, — in short, whether he could give any account whatever of this man's being condemned to death. He could give no account of it, but the orders of Colonel Hannay, who seems to have imprisoned and condemned him by his own arbitrary will.

Upon the demand of Rajah Mustapha by the insurgents being made known to Colonel Hannay, he sends an order to the commander of the fort, a man already stained with the blood of all the people who were murdered there, that, if he had not executed Mustapha Khân, he should execute him immediately. The man is staggered at the order, and refuses to execute it, as not being directly addressed to him. Colonel Hannay then sends a Captain Williams, who has appeared here as an evidence at your bar, and who, together with Captain Gordon and Major Macdonald, both witnesses also here, were all sub-farmers and actors under Colonel Hannay. This Captain Williams, I say, goes there, and, without asking one of those questions which I put to the witness at your bar, and desiring nothing but Colonel Hannay's word, orders the man to be beheaded; and accordingly he was beheaded, agreeably to the orders of Colonel Hannay. Upon this, the rebellion blazed out with tenfold fury, and the people declared they would be revenged for the destruction of their zemindar.

Your Lordships have now seen this Mustapha Khân imprisoned and sentenced to death by Colonel Hannay, without judge and without accuser, without any evidence, without the *fetwah*, or any sentence of the law. This man is thus put to death by an arbitrary villain, by a more than cruel tyrant, Colonel Hannay, the substitute of a ten thousand times more cruel tyrant, Mr. Hastings.

In this situation was the country of Oude, under Colonel Hannay, when he was removed from it. The knowledge of his misconduct had before induced the miserable Nabob to make an effort to get rid of him; but Mr. Hastings had repressed that effort by

a civil reprimand, — telling him, indeed, at the same time, "I do not force you to receive him." (Indeed, the Nabob's situation had in it force enough.) The Nabob, I say, was forced to receive him; and again he ravages and destroys that devoted country, till the time of which I have been just speaking, when he was driven out of it finally by the rebellion, and, as you may imagine, departed like a leech full of blood.

It is stated in evidence upon your minutes that this bloated leech went back to Calcutta; that he was supposed, from a state of debt, (in which he was known to have been when he left that city,) to have returned from Oude with the handsome sum of 300, 000*l.*, of which 80,000*l.* was in gold mohurs. This is declared to be the universal opinion in India, and no man has ever contradicted it. Ten persons have given evidence to that effect; not one has contradicted it, from that hour to this, that I ever heard of. The man is now no more. Whether his family have the whole of the plunder or not, — what partnership there was in this business, — what shares, what dividends were made, and who got them, — about all this public opinion varied, and we can with certainty affirm nothing; but there ended the life and exploits of Colonel Hannay, farmer-general, civil officer, and military commander of Baraitch and Goruckpore. But not so ended Mr. Hastings's proceedings.

Soon after the return of Colonel Hannay to Calcutta, this miserable Nabob received intelligence, which concurrent public fame supported, that Mr. Hastings meant to send him up into the country again, on a second expedition, probably with some such order as this: — "You have sucked blood enough for yourself, now try what you can do for your neigh-

bors." The Nabob was not likely to be misinformed. His friend and agent, Gobind Ram, was at Calcutta, and had constant access to all Mr. Hastings's people. Mr. Hastings himself tells you what instructions these vakeels always have to search into and discover all his transactions. This Gobind Ram, alarmed with strong apprehensions, and struck with horror at the very idea of such an event, apprised his master of his belief that Mr. Hastings meant to send Colonel Hannay again into the country. Judge now, my Lords, what Colonel Hannay must have been, from the declaration which I will now read to you, extorted from that miserable slave, the Nabob, who thus addresses Mr. Hastings.

"My country and house belong to you; there is no difference. I hope that you desire in your heart the good of my concerns. Colonel Hannay is inclined to request your permission to be employed in the affairs of this quarter. If by any means any matter of this country dependent on me should be intrusted to the Colonel, I swear by the Holy Prophet, that I will not remain here, but will go from hence to you. From your kindness let no concern dependent on me be intrusted to the Colonel, and oblige me by a speedy answer which may set my mind at ease."

We know very well that the prisoner at your bar denied his having any intention to send him up. We cannot prove them, but we maintain that there were grounds for the strongest suspicions that he entertained such intentions. He cannot deny the reality of this terror which existed in the minds of the Nabob and his people, under the apprehension that he was to be sent up, which plainly showed that they at least considered there was ground enough for

charging him with that intention. What reason was there to think that he should not be sent a third time, who had been sent twice before? Certainly, none; because every circumstance of Mr. Hastings's proceedings was systematical, and perfectly well known at Oude.

But suppose it to have been a false report; it shows all that the Managers wish to show, the extreme terror which these creatures and tools of Mr. Hastings struck into the people of that country. His denial of any intention of again sending Colonel Hannay does not disprove either the justness of their suspicions or the existence of the terror which his very name excited.

My Lords, I shall now call your attention to a part of the evidence which we have produced to prove the terrible effects of Colonel Hannay's operations. Captain Edwards, an untainted man, who tells you that he had passed through that country again and again, describes it as bearing all the marks of savage desolation. Mr. Holt says it has fallen from its former state, — that whole towns and villages were no longer peopled, and that the country carried evident marks of famine. One would have thought that Colonel Hannay's cruelty and depredations would have satiated Mr. Hastings. No: he finds another military collector, a Major Osborne, who, having suffered in his preferment by the sentence of a court-martial, whether justly or unjustly I neither know nor care, was appointed to the command of a thousand men in the provinces of Oude, but really to the administration of the revenues of the country. He administered them much in the same manner as Colonel Hannay had done. He, however, transmitted to the

government at Calcutta a partial representation of the state of the provinces, the substance of which was, that the natives were exposed to every kind of peculation, and that the country was in a horrible state of confusion and disorder. This is upon the Company's records; and although not produced in evidence, your Lordships may find it, for it has been printed over and over again. This man went up to the Vizier; in consequence of whose complaint, and the renewed cries of the people, Mr. Hastings was soon obliged to recall him.

But, my Lords, let us go from Major Osborne to the rest of these military purveyors of revenue. Your Lordships shall hear the Vizier's own account of what he suffered from British officers, and into what a state Mr. Hastings brought that country by the agency of officers who, under the pretence of defending it, were invested with powers which enabled them to commit most horrible abuses in the administration of the revenue, the collection of customs, and the monopoly of the markets.

Copy of a Letter from the Nabob Vizier to the Governor-General.

"All the officers stationed with the brigade at Cawnpore, Futtyghur, Darunghur, and Furruckabad, and other places, write purwannahs, and give positive orders to the aumils of these places, respecting the grain, &c.; from which conduct the country will become depopulate. I am hopeful from your friendship that you will write to all these gentlemen not to issue orders, &c., to the aumils, and not to send troops into the mahals of the sircar; and for whatever quantity of grain, &c., they may want, they

will inform me and the Resident, and we will write it to the aumils, who shall cause it to be sent them every month, and I will deduct the price of them from the tuncaws: this will be agreeable both to me and to the ryots."

A Copy of a subsequent Letter from the Vizier to Rajah Gobind Ram.

"I some time ago wrote you the particulars of the conduct of the officers, and now write them again. The officers and gentlemen who are at Cawnpore, and Futtyghur, and Darunghur, and other places, by different means act very tyrannically and oppressively towards the aumils and ryots and inhabitants; and to whomsoever that requires a dustuck they give it, with their own seal affixed, and send for the aumils and punish them. If they say anything, the gentlemen make use of but two words: one,— *That is for the brigade;* and the second,— *That is to administer justice.* The particulars of it is this, — that the byparees will bring their grain from all quarters, and sell for their livelihood. There is at present no war to occasion a necessity for sending for it. If none comes, whatever quantity will be necessary every month I will mention to the aumils, that they may bring it for sale: but there is no deficiency of grain. The gentlemen have established gunges for their own advantage, called Colonel Gunge, at Darunghur, Futtyghur, &c. The collection of the customs from all quarters they have stopped, and collected them at their own gunges. Each gunge is rented out at 30,000 - 40,000 rupees, and their collections paid to the gentlemen. They have established gunges where there never were any, and

where they were, those they have abolished; 30,000 or 40,000 rupees is the sum they are rented at; the collections, to the amount of a lac of rupees, are stopped. Major Briscoe, who is at Darunghur, has established a gunge which rented out for 45,000 rupees, and has stopped the ghauts round about the byparees; and merchants coming from Cashmere, from Shahjehanabad, and bringing shawls and other goods and spices, &c., from all quarters, he orders to his gunge, and collects the duty from the aumils, gives them a chit, and a guard, who conducts them about five hundred coss: the former duties are not collected. From the conduct at Cawnpore, Futtyghur, Furruckabad, &c., the duties from the lilla of Gora and Thlawa are destroyed, and occasion a loss of three lacs of rupees to the duties; and the losses that are sustained in Furruckabad may be ascertained by the Nabob Muzuffer Jung, to whom every day complaints are made: exclusive of the aumils and collectors, others lodge complaints. Whatever I do, I desire no benefit from it; I am remediless and silent; from what happens to me, I know that worse will happen in other places; the second word, I know, is from their mouths only. This is the case. In this country formerly, and even now, whatever is to be received or paid among the zemindars, ryots, and inhabitants of the cities, and poor people, neither those who can pay or those who cannot pay ever make any excuse to the shroffs; but when they could pay, they did. In old debts of fifty years, whoever complain to the gentlemen, they agree that they shall pay one fourth, and send dustucks and sepoys to all the aumils, the chowdries, and canongoes, and inhabitants of all the towns; they send for everybody, to do

them justice, confine them, and say they will settle the business. So many and numerous are these calamities, that I know not how much room it will take up to mention them. Mr. Briscoe is at Darunghur; and the complaints of the aumils arrive daily. I am silent. Now Mr. Middleton is coming here, let the Nabob appoint him for settling all these affairs, that whatever he shall order those gentlemen they will do. From this everything will be settled, and the particulars of this quarter will be made known to the Nabob. I have written this, which you will deliver to the Governor, that everything may be settled; and when he has understood it, whatever is his inclination, he will favor me with it. The Nabob is master in this country, and is my friend; there is no distinction."

Copy of another Letter, entered upon the Consultation of the 4th of June, 1781.

"I have received your letter, requesting leave for a battalion to be raised by Captain Clark on the same footing as Major Osborne's was, agreeable to the requests and complaints of Ishmael Beg, the aumil of Allahabad, &c., and in compliance with the directions of the Council. You are well acquainted with the particulars and negotiation of Ishmael Beg, and the nature of Mr. Osborne's battalion. At the beginning of the year 1186 (1779) the affairs of Allahabad were given on a lease of three years to Ishmael Beg, together with the purgunnahs Arreel and Parra; and I gave orders for troops to be stationed and raised, conformable to his request. Ishmael Beg accordingly collected twelve hundred peons, which were not allowed to the aumil of that place in the

year 1185. The reason why I gave permission for the additional expense of twelve hundred peons was, that he might be enabled to manage the country with ease, and pay the money to government regularly. I besides sent Mr. Osborne there to command in the mahals belonging to Allahabad, which were in the possession of Rajah Ajeet Sing; and he accordingly took charge. Afterwards, in obedience to the orders of the Governor-General, Mr. Hastings, Jelladut Jung, he was recalled, and the mahals placed, as before, under Rajah Ajeet Sing. I never sent Mr. Osborne to settle the concerns of Allahabad, for there was no occasion for him; but Mr. Osborne, of himself, committed depredations and rapines within Ishmael Beg's jurisdiction. Last year, the battalion, which, by permission of General Sir Eyre Coote, was sent, received orders to secure and defend Ishmael Beg against the encroachments of Mr. Osborne; for the complaints of Ishmael Beg against the violences of Mr. Osborne had reached the General and Mr. Purling; and the Governor and gentlemen of Council, at my request, recalled Mr. Osborne. This year, as before, the collections of Arreel and Parra remain under Ishmael Beg. In those places, some of the talookdars and zemindars, who had been oppressed and ill-treated by Mr. Osborne, had conceived ideas of rebellion."

Here, my Lords, you have an account of the condition of Darunghur, Futtyghur, Furruckabad, and of the whole line of our military stations in the Nabob's dominions. You see the whole was one universal scene of plunder and rapine. You see all this was known to Mr. Hastings, who never inflicted

any punishments for all this horrible outrage. You see the utmost he has done is merely to recall one man, Major Osborne, who was by no means the only person deeply involved in these charges. He nominated all these people; he has never called any of them to an account. Shall I not, then, call him their captain-general? Shall not your Lordships call him so? And shall any man in the kingdom call him by any other name? We see all the executive, all the civil and criminal justice of the country seized on by him. We see the trade and all the duties seized upon by his creatures. We see them destroying established markets, and creating others at their pleasure. We see them, in the country of an ally and in a time of peace, producing all the consequences of rapine and of war. We see the country ruined and depopulated by men who attempt to exculpate themselves by charging their unhappy victims with rebellion.

And now, my Lords, who is it that has brought to light all these outrages and complaints, the existence of which has never been denied, and for which no redress was ever obtained, and no punishment ever inflicted? Why, Mr. Hastings himself has brought them before you; they are found in papers which he has transmitted. God, who inflicts blindness upon great criminals, in order that they should meet with the punishment they deserve, has made him the means of bringing forward this scene, which we are maliciously said to have falsely and maliciously devised. If any one of the ravages [charges?] contained in that long catalogue of grievances is false, Warren Hastings is the person who must answer for that individual falsehood. If they are generally false,

he is to answer for the false and calumniating accusation; and if they are true, my Lords, he only is answerable, for he appointed those ministers of outrage, and never called them to account for their misconduct.

Let me now show your Lordships the character that Mr. Hastings gives of all the British officers. It is to be found in an extract from the Appendix to that part of his Benares Narrative in which he comments upon the treaty of Chunar. Mark, my Lords, what the man himself says of the whole military service.

"Notwithstanding the great benefit which the Company would have derived from such an augmentation of their military force as these troops constituted, ready to act on any emergency, prepared and disciplined without any charge on the Company, as the institution professed, until their actual services should be required, I have observed some evils growing out of the system, which, in my opinion, more than counterbalanced those advantages, had they been realized in their fullest effect. The remote stations of these troops, placing the commanding officers beyond the notice and control of the board, afforded too much opportunity and temptation for unwarrantable emoluments, and excited the contagion of peculation and rapacity throughout the whole army. A most remarkable and incontrovertible proof of the prevalence of this spirit has been seen in the court-martial upon Captain Erskine, where the court, composed of officers of rank and respectable characters, unanimously and honorably, most honorably, acquitted him upon an acknowledged fact which in times of stricter discipline would have been deemed a crime deserving the severest punishment."

I will now call your Lordships' attention to another extract from the same comment of Mr. Hastings, with respect to the removal of the Company's servants, civil and military, from the court and service of the Vizier.

"I was actuated solely by motives of justice to him and a regard to the honor of our national character. In removing those gentlemen I diminish my own influence, as well as that of my colleagues, by narrowing the line of patronage; and I expose myself to obloquy and resentment from those who are immediately affected by the arrangement, and the long train of their friends and powerful patrons. But their numbers, their influence, and the enormous amount of their salaries, pensions, and emoluments, were an intolerable burden on the revenues and authority of the Vizier, and exposed us to the envy and resentment of the whole country, by excluding the native servants and adherents of the Vizier from the rewards of their services and attachment."

My Lords, you have here Mr. Hastings's opinion of the whole military service. You have here the authority and documents by which he supports his opinion. He states that the contagion of peculation had tainted all the frontier stations, which contain much the largest part of the Company's army. He states that this contagion had tainted the whole army, *everywhere:* so that, according to him, there was, throughout the Indian army, an universal taint of peculation. My Lords, peculation is not a military vice. Insubordination, want of attention to duty, want of order, want of obedience and regularity, are military vices; but who ever before heard of peculation being a military vice? In the case before you,

it became so by employing military men as farmers of revenue, as masters of markets and of gunges. This departure from the military character and from military duties introduced that peculation which tainted the army, and desolated the dominions of the Nabob Vizier.

I declare, when I first read the passage which has been just read to your Lordships, in the infancy of this inquiry, it struck me with astonishment that peculation should *at all* exist as a military vice; but I was still more astonished at finding Warren Hastings charging the *whole* British army with being corrupted by this base and depraved spirit, to a degree which tainted even their judicial character. This, my Lords, is a most serious matter. The judicial functions of military men are of vast importance in themselves; and, generally speaking, there is not any tribunal whose members are more honorable in their conduct and more just in their decisions than those of a court-martial. Perhaps there is not a tribunal in this country whose reputation is really more untainted than that of a court-martial. It stands as fair, in the opinion both of the army and of the public, as any tribunal, in a country where *all* tribunals stand fair. But in India, this unnatural vice of peculation, which has no more to do with the vices of a military character than with its virtues, this venomous spirit, has pervaded the members of military tribunals to such an extent, that they acquit, honorably acquit, *most* honorably acquit a man, "upon an acknowledged fact which in times of stricter discipline would have been deemed a crime deserving the severest punishment."

Who says all this, my Lords? Do I say it? No:

it is Warren Hastings who says it. He records it. He gives you his vouchers and his evidence, and he draws the conclusion. He is the criminal accuser of the British army. He who sits in that box accuses the whole British army in India. He has declared them to be so tainted with peculation, from head to foot, as to have been induced to commit the most wicked perjuries, for the purpose of bearing one another out in their abominable peculations. In this unnatural state of things, and whilst there is not one military man on these stations of whom Mr. Hastings does not give this abominably flagitious character, yet every one of them have joined to give him the benefit of their testimony for his honorable intentions and conduct.

In this tremendous scene, which he himself exposes, are there no signs of this captain-generalship which I have alluded to? Are there no signs of this man's being a captain-general of iniquity, under whom all the spoilers of India were paid, disciplined, and supported? I not only charge him with being guilty of a thousand crimes, but I assert that there is not a soldier or a civil servant in India whose culpable acts are not owing to this man's example, connivance, and protection. Everything which goes to criminate them goes directly against the prisoner. He puts them in a condition to plunder; he suffered no native authority or government to restrain them; and he never called a man to an account for these flagitious acts which he has thought proper to bring before his country in the most solemn manner and upon the most solemn occasion.

I verily believe, in my conscience, his accusation is not true, in the excess, in the generality and ex-

travagance in which he charges it. That it is true in a great measure we cannot deny; and in that measure we, in our turn, charge him with being the author of all the crimes which he denounces; and if there is anything in the charge beyond the truth, it is he who is to answer for the falsehood.

I will now refer your Lordships to his opinion of the civil service, as it is declared and recorded in his remarks upon the removal of the Company's civil servants by him from the service of the Vizier. — "I was," says he, "actuated solely by motives of justice to him [the Nabob of Oude], and a regard to the honor of our national character." — Here, you see, he declares his opinion that in Oude the civil servants of the Company had destroyed the national character, and that therefore they ought to be recalled. — "By removing these people," he adds, "I diminish my patronage." — But I ask, How came they there? Why, through this patronage. He sent them there to suck the blood which the military had spared. He sent these civil servants to do ten times more mischief than the military ravagers could do, because they were invested with greater authority. — "If," says he, "I recall them from thence, I lessen my patronage." — But who, my Lords, authorized him to become a patron? What laws of his country justified him in forcing upon the Vizier the civil servants of the Company? What treaty authorized him to do it? What system of policy, except his own wicked, arbitrary system, authorized him to act thus?

He proceeds to say, "I expose myself to obloquy and resentment from those who are immediately affected by the arrangement, and the long train of their

friends and powerful patrons." — My Lords, it is the constant burden of his song, that he cannot do his duty, that he is fettered in everything, that he fears a thousand mischiefs to happen to him, — not from his acting with carefulness, economy, frugality, and in obedience to the laws of his country, but from the very reverse of all this. Says he, "I am afraid I shall forfeit the favor of the powerful patrons of those servants in England, namely, the Lords and Commons of England, if I do justice to the suffering people of this country."

In the House of Commons there are undoubtedly powerful people who may be supposed to be influenced by patronage; but the higher and more powerful part of the country is more directly represented by your Lordships than by us, although we have of the first blood of England in the House of Commons. We do, indeed, represent, by the knights of the shires, the landed interest; by our city and borough members we represent the trading interest; we represent the whole people of England collectively. But neither blood nor power is represented so fully in the House of Commons as that order which composes the great body of the people, — the protection of which is our peculiar duty, and to which it is our glory to adhere. But the dignities of the country, the great and powerful, are represented eminently by your Lordships. As we, therefore, would keep the lowest of the people from the contagion and dishonor of peculation and corruption, and above all from exercising that vice which, among commoners, is unnatural as well as abominable, the vice of tyranny and oppression, so we trust that your Lordships will clear yourselves and the higher and more power-

ful ranks from giving the smallest countenance to the system which we have done our duty in denouncing and bringing before you.

My Lords, you have heard the account of the civil service. Think of their numbers, think of their influence, and the enormous amount of their salaries, pensions, and emoluments! They were, you have heard, an intolerable burden on the revenues and authority of the Vizier; and they exposed us to the envy and resentment of the whole country, by excluding the native servants and adherents of the prince from the just reward of their services and attachments. Here, my Lords, is the whole civil service brought before you. They usurp the country, they destroy the revenues, they overload the prince, and they exclude all the nobility and eminent persons of the country from the just reward of their service.

Did Mr. Francis, whom I saw here a little while ago, send these people into that country? Did General Clavering, or Colonel Monson, whom he charges with this system, send them there? No, they were sent by himself; and if one was sent by anybody else for a time, he was soon recalled: so that he is himself answerable for all the peculation which he attributes to the civil service. You see the character given of that service; you there see their accuser, you there see their defender, who, after having defamed both services, military and civil, never punished the guilty in either, and now receives the prodigal praises of both.

I defy the ingenuity of man to show that Mr. Hastings is not the defamer of the service. I defy the ingenuity of man to show that the honor of Great Britain has not been tarnished under his patronage.

He engaged to remove all these bloodsuckers by the treaty of Chunar; but he never executed that treaty. He proposed to take away the temporary brigade; but he again established it. He redressed no grievance; he formed no improvements in the government; he never attempted to provide a remedy without increasing the evil tenfold. He was the primary and sole cause of all the grievances, civil and military, to which the unhappy natives of that country were exposed; and he was the accuser of all the immediate authors of those grievances, without having punished any one of them. He is the accuser of them all. But the only person whom he attempted to punish was that man who dared to assert the authority of the Court of Directors, and to claim an office assigned to him by them.

I will now read to your Lordships the protest of General Clavering against the military brigade. — "Taking the army from the Nabob is an infringement of the rights of an independent prince, leaving only the name and title of it without the power. It is taking his subjects from him, against every law of Nature and of nations."

I will next read to your Lordships a minute of Mr. Francis's. — "By the foregoing letter from Mr. Middleton it appears that he has taken the government of the Nabob's dominions directly upon himself. I was not a party to the resolutions which preceded that measure, and will not be answerable for the consequences of it."

The next paper I will read is one introduced by the Managers, to prove that a representation was made by the Nabob respecting the expenses of the gentlemen resident at his court, and written after the removal before mentioned.

Extract of a Letter from the Vizier to Mr. Macpherson, received the 21st April, 1785.

"With respect to the expenses of the gentlemen who are here, I have before written in a covered manner; I now write plainly, that I have no ability to give money to the gentlemen, because I am indebted many lacs of rupees to the bankers for the payment of the Company's debt. At the time of Mr. Hastings's departure, I represented to him that I had no resources for the expenses of the gentlemen. Mr. Hastings, having ascertained my distressed situation, told me that after his arrival in Calcutta he would consult with the Council, and remove from hence the expenses of the gentlemen, and recall every person except the gentlemen in office here. At this time that all the concerns are dependent upon you, and you have in every point given ease to my mind, according to Mr. Hastings's agreement, I hope that the expenses of the gentlemen may be removed from me, and that you may recall every person residing here beyond the gentlemen in office. Although Major Palmer does not at this time demand anything for the gentlemen, and I have no ability to give them anything, yet the custom of the English gentlemen is, when they remain here, they will in the end ask for something. This is best, that they should be recalled."

I think so, too; and your Lordships will think so with me; but Mr. Hastings, who says that he himself thought thus in September, 1781, and engaged to recall these gentlemen, was so afraid of their powerful friends and patrons here, that he left India, and

left all that load of obloquy upon his successors. He left a Major Palmer there, in the place of a Resident: a Resident of his own, as your Lordships must see; for Major Palmer was no Resident of the Company's. This man received a salary of about 23,000*l.* a year, which he declared to be less than his expenses; by which we may easily judge of the enormous salaries of those who make their fortunes there. He was left by Mr. Hastings as his representative of peculation, his representative of tyranny. He was the second agent appointed to control all power ostensible and unostensible, and to head these gentlemen whose "custom," the Nabob says, "was in the end to ask for money." Money they must have; and there, my Lords, is the whole secret.

I have this day shown your Lordships the entire dependence of Oude on the British empire. I have shown you how Mr. Hastings usurped all power, reduced the prince to a cipher, and made of his minister a mere creature of his own, — how he made the servants of the Company dependent on his own arbitrary will, and considered independence a proof of corruption. It has been likewise proved to your Lordships that he suffered the army to become an instrument of robbery and oppression, and one of its officers to be metamorphosed into a farmer-general to waste the country and embezzle its revenues. You have seen a clandestine and fraudulent system, occasioning violence and rapine; and you have seen the prisoner at the bar acknowledging and denouncing an abandoned spirit of rapacity without bringing its ministers to justice, and pleading as his excuse the fear of offending your Lordships and the

House of Commons. We have shown you the government, revenue, commerce, and agriculture of Oude ruined and destroyed by Mr. Hastings and his creatures. And to wind up all, we have shown you an army so corrupted as to pervert the fundamental principles of justice, which are the elements and basis of military discipline. All this, I say, we have shown you; and I cannot believe that your Lordships will consider that we have trifled with your time, or strained our comments one jot beyond the strict measure of the text. We have shown you a horrible scene, arising from an astonishing combination of horrible circumstances. The order in which you will consider these circumstances must be left to your Lordships.

At present I am not able to proceed further. My next attempt will be to bring before you the manner in which Mr. Hastings treated movable and immovable property in Oude, and by which he has left nothing undestroyed in that devoted country.

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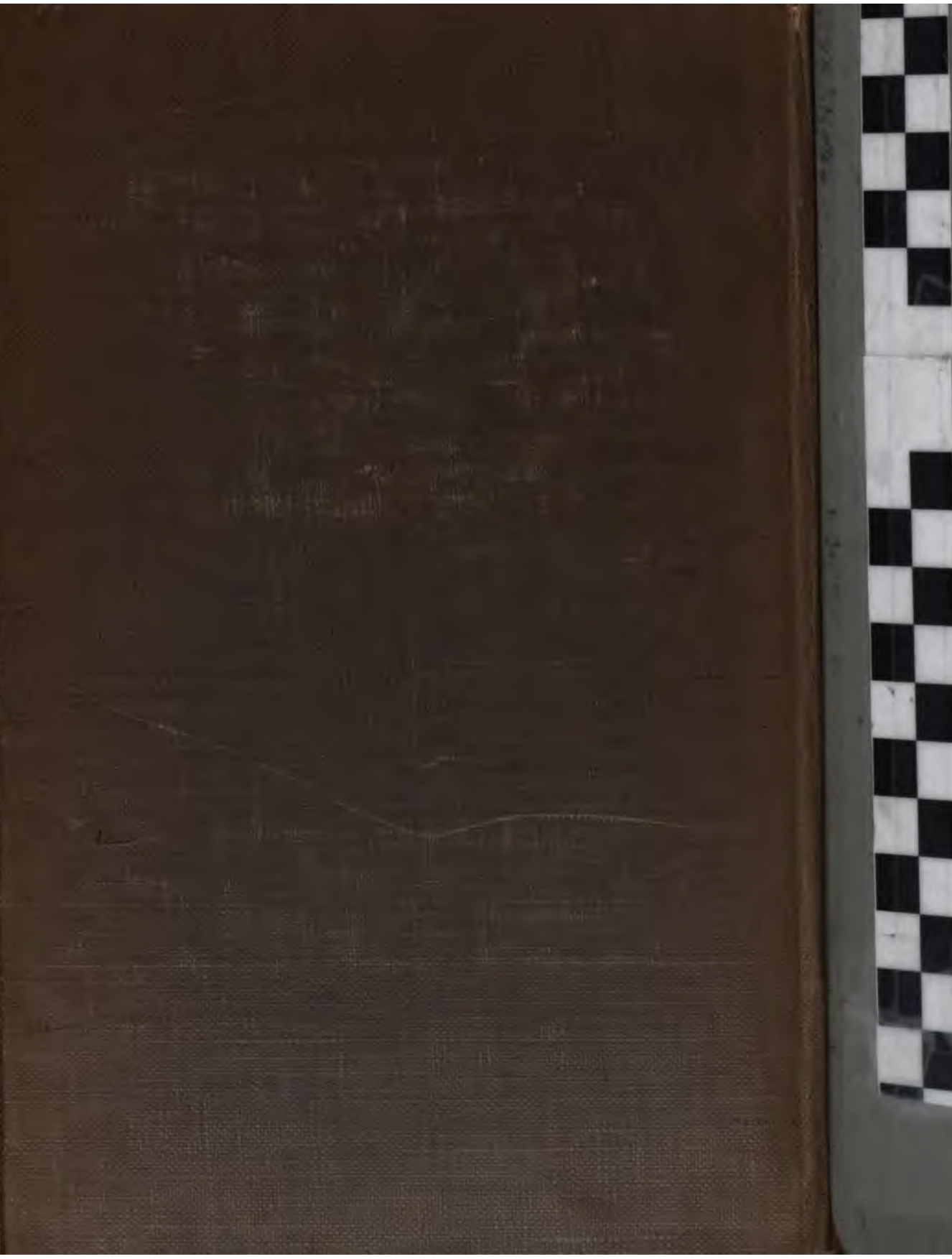
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